

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

UNITED STATES OF AMERICA)
)
VS.) CAUSE NO. 6:15-CR-030-C
)
RAFAEL ANTONIO MARIN-PINA)

TRANSCRIPT OF TRIAL - VOLUME 1 OF 2
BEFORE THE HONORABLE SAM R. CUMMINGS,
SENIOR UNITED STATES DISTRICT JUDGE, AND A JURY.

MONDAY, FEBRUARY 1, 2016
LUBBOCK, TEXAS

A P P E A R A N C E S

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY; TRANSCRIPT
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DEFENSE EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>ADMITTED</u>
None			

* * * * *

1 P R O C E E D I N G S

2 THE COURT: Good morning. Welcome to the United
3 States District Court.

4 The first item of business this morning will be to
5 qualify those who have responded to a jury summons. So if you
6 are here in response to a jury summons, if you would please
7 stand and raise your right hands, we need to give you an oath.

8 (THE PANEL MEMBERS ARE SWORN)

9 THE COURT: Please be seated.

10 Listen carefully as I read the qualifications for
11 those to serve on a jury in the United States District Court.
12 Every person shall be deemed qualified to serve on a trial jury
13 in the United States District Court for the Northern District
14 of Texas if you are a citizen of the United States, at least
15 eighteen years old and have resided for a period of at least
16 one year within this judicial district; if you're able to read,
17 write, and understand the English language with a degree of
18 proficiency sufficient to fill out satisfactorily the jury
19 qualification form; if you're able to speak the English
20 language; if you're capable, both mentally and physically, to
21 render satisfactory jury service; and if you have neither a
22 charge pending against you for the commission of, nor have you
23 been convicted in a state or federal court of record of a crime
24 punishable by imprisonment for more than one year and your
25 civil rights have not been restored by pardon or amnesty.

1 Now, is there anyone on the jury panel who believes
2 you are not qualified to serve on a jury based on what I've
3 just read? If so, please raise your hand. Anyone? I take it
4 each one of you believes you are qualified, and I so find.

5 Now, even though you are qualified, there are
6 certain members of the community who are exempt from jury
7 service, so listen carefully. Members of the following groups
8 are exempt from jury service in the United States District
9 Court for the Northern District of Texas:

10 First, members in active service in the armed
11 forces of the United States;

12 Next, members of the fire or police departments of
13 any state, district, territory, possession, or subdivision
14 thereof;

15 And finally, any public officers in the executive,
16 legislative, or judicial branches of the government of the
17 United States, or any state, district, territory, possession,
18 or subdivision thereof, who are actively engaged in the
19 performance of official duties.

20 Now, is there anyone on the jury panel who believes
21 you are exempt from jury service based on what I've just read?
22 If so, please raise your hand. Anyone? I take it none of you
23 believes you are exempt, and I so find.

24 Now, even though you are qualified and are not
25 exempt, there are certain members of the community who may seek

1 to be excused from jury service if you fall within any of the
2 following categories. It's within my discretion to grant that
3 excuse however.

4 First, persons who are licensed to and who are
5 actively practicing medicine in the State of Texas;

6 Next, persons having active care of a child or
7 children under ten years of age whose service on a jury would
8 require leaving the child or children without adequate
9 supervision;

10 Next, persons essential to the care of aged or
11 infirm persons;

12 Next, persons over seventy years of age;

13 Next, persons who are full-time students of a
14 public or private secondary school or an accredited college or
15 university;

16 Next, persons who are volunteer safety personnel,
17 that is, serving in an official capacity without compensation
18 as firefighters or members of a rescue squad or ambulance crew;

19 And finally, persons who have, within the past two
20 years, served on a federal grand jury or trial jury panel for
21 more than 30 days.

22 Now, is there anyone on the jury panel who would
23 seek to be excused based on what I've just read? If so, please
24 raise your hand. Anyone? Yes, if you would stand and give us
25 your name.

1 UNIDENTIFIED PANEL MEMBER: My name is Krisann
2 Schulz. I'm a physician assistant, and I practice medicine.

3 THE COURT: All right. We'll make a note of that.
4 Thank you.

5 Anyone else? Yes, if you would stand and give us
6 your name.

7 UNIDENTIFIED PANEL MEMBER: Aracely Villarreal. I
8 have a, you know, child under the age of--well, she is seven,
9 and then a 14-year-old. I live in Denver City, an hour and a
10 half away. I'd have to leave my kids either overnight or
11 somebody to pick them up to go--to take them to school.

12 THE COURT: Where do you live?

13 THE PANEL MEMBER: Denver City.

14 THE COURT: Denver City? All right. We'll make a
15 note of that and get back to you.

16 Anyone else? All right.

17 We're going to begin trial this morning in
18 Cause Number 6:15-030. This case is styled
19 United States of America vs. Rafael Antonio Marin-Pina. This
20 is a criminal case brought by the government against the
21 defendant. In a case of this nature, the jury panel must keep
22 certain things in mind.

23 First of all, the government has the burden of
24 proof. The government must prove their case beyond a
25 reasonable doubt.

1 Next, the defendant is presumed to be innocent.

2 And finally, the defendant is not required to
3 testify or present any evidence.

4 So keep those things in mind as we proceed
5 throughout the trial of this case.

6 The first stage of the proceedings is the voir-dire
7 examination. The purpose of voir dire is to select that jury
8 which we believe is best situated to try this particular case.
9 I'll be asking you a few questions; then I'll give the
10 attorneys an opportunity to ask supplemental questions. In
11 asking these questions, we're not trying to pry into your lives
12 unnecessarily. We're simply trying to get enough information
13 to select the jury in this particular case, or for this
14 particular case.

15 Now, in this case, the United States is represented
16 by Attorney Sean Long. Mr. Long, if you would introduce
17 yourself and your co-counsel and case agent.

18 MR. LONG: Good morning. My name is Sean Long with
19 the United States Attorney's Office. This is my co-counsel,
20 Jeffrey Haag--

21 MR. HAAG: Good morning.

22 MR. LONG: --and this is our case agent, Lonnie
23 Felps.

24 THE COURT: All right. Anybody on the jury panel
25 who knows Mr. Long, his co-counsel or the case agent? If so,

1 please raise your hand. Anyone? I take it none of you knows
2 these individuals.

3 The defendant in this case is represented by
4 Attorney David Sloan. Mr. Sloan, if you would introduce
5 yourself, your co-counsel, and your client.

6 MR. SLOAN: Good morning. My name is David Sloan.
7 I work in the Federal Defender's Office. This is my client,
8 Rafael Marin, and my co-counsel is Helen Liggett.

9 THE COURT: All right. Thank you very much.

10 Anybody on the jury panel who knows Mr. Sloan, his
11 co-counsel, or their client? If so, please raise your hand.
12 Anyone? I take it none of you knows these individuals.

13 This case is brought into court by what is called
14 an indictment. An indictment is not evidence of guilt. It's
15 not evidence of anything at all. It's simply the means by
16 which the government bring their case into court.

17 In this case, we have a one-count indictment, and I
18 will read it as follows:

19 The government is alleging on or about
20 September 13, 2015, in the San Angelo Division of the Northern
21 District and elsewhere, Rafael Antonio Marin-Pina, defendant,
22 an alien, knowingly entered, attempted to enter, and was found
23 in the United States of America after having been denied
24 admission, excluded, deported and removed therefrom, at or near
25 the port of departure at San Ysidro, California, on or about

1 August 7, 2008, and not having received the express consent of
2 the Attorney General of the United States and the Secretary of
3 Homeland Security to apply for readmission to the United States
4 since the time of his previous denial of admission, exclusion,
5 deportation, and removal therefrom.

6 That's what the government is alleging in the case.
7 To this indictment, the defendant has entered a plea of not
8 guilty. I've already told you that he is presumed to be
9 innocent, and the burden of proof is upon the government to
10 prove their case.

11 Based on what I've just read, is there anybody on
12 the jury panel who has personal knowledge of any facts that
13 might deal with this case in any way? If so, please raise your
14 hand. Anyone? I take it none of you does.

15 Is there anyone on the jury panel who has read or
16 heard anything in the way of pretrial publicity or news
17 accounts in reference to this case? If so, please raise your
18 hand. Anyone? I take it none of you has.

19 I'd ask the lawyers to pull your witness lists and
20 be prepared to read the names of your witnesses. Mr. Long?

21 MR. LONG: Yes, Your Honor. Potential witnesses
22 are Lonnie Felts and Garland Timms with the Lubbock Police
23 Department.

24 THE COURT: All right. Anybody on the jury panel
25 who knows the witnesses that might be called by the government

1 in the case? If so, please raise your hand. Anyone? I take
2 it no one knows these individuals.

3 Mr. Sloan?

4 MR. SLOAN: Your Honor, potential witnesses in this
5 case include the defendant, Rafael Marin; his wife, Bibiana
6 Marin; and Oscar Barrientos, an investigator in our Del Rio
7 office.

8 THE COURT: All right. Anybody on the jury panel
9 who knows any of the additional witnesses that might be called
10 by the defense? If so, please raise your hand. Anyone? I
11 take it none of you knows these individuals.

12 Is there anyone on the jury panel who has served as
13 a juror in another case, either in state or federal court? You
14 have served as a member of a trial jury, either in state or
15 federal court. If so, please raise your hand. Anyone?

16 All right. We've got a number of persons. Just
17 lower your hands. Let me ask you an additional question.
18 Those of you who have served on a jury, how many have served on
19 a criminal jury? You dealt with a criminal matter, either in
20 state or federal court. If so, please raise your hand.
21 Anyone? All right. Here on the first row, if you would stand
22 and give us your name, please.

23 UNIDENTIFIED PANEL MEMBER: Nathan Edmunds. I
24 served on a DWI case.

25 THE COURT: All right. Where was that?

1 THE PANEL MEMBER: That was here in Lubbock. I
2 don't know if it was a state or county issue.

3 THE COURT: How long ago?

4 THE PANEL MEMBER: Two years ago.

5 THE COURT: All right. The fact that you sat as a
6 juror in that case, would that have any bearing upon you being
7 a fair and impartial juror in this case?

8 THE PANEL MEMBER: Shouldn't have any--anything to
9 do with it, no, sir.

10 THE COURT: All right. Thank you very much.
11 Someone else over here? Anyone? Yes, sir.

12 UNIDENTIFIED PANEL MEMBER: William Scott. I
13 served on a jury about, oh, five or six years ago in Yoakum
14 County, Texas, and it was a drug--drug arrest.

15 THE COURT: All right, sir. The fact that you
16 served as a juror in that case, would that have any bearing
17 upon you being a fair and impartial juror in this case?

18 THE PANEL MEMBER: No.

19 THE COURT: All right. Thank you very much.
20 Anyone else over here? Yes.

21 UNIDENTIFIED PANEL MEMBER: My name is Chad Morse.
22 I served on a jury probably seven years ago regarding a
23 criminal case.

24 THE COURT: Where was that?

25 THE PANEL MEMBER: Here in Lubbock, Texas.

1 THE COURT: Here in Lubbock? The fact that you sat
2 on that jury, would that have any bearing upon you being a fair
3 and impartial juror in this case?

4 THE PANEL MEMBER: No.

5 THE COURT: Thank you very much.

6 Anyone else over here? Yes, sir.

7 UNIDENTIFIED PANEL MEMBER: My name is David
8 Hagood. I served on a criminal jury in Lubbock County about
9 ten years ago. It was drug-related.

10 THE COURT: All right, sir. The fact that you sat
11 on that jury, would that have any bearing upon you being a fair
12 and impartial juror in this case?

13 THE PANEL MEMBER: No, sir.

14 THE COURT: All right. Thank you very much.

15 Yes, ma'am?

16 UNIDENTIFIED PANEL MEMBER: Bronwyn Shaw. I served
17 on a jury duty in Lubbock about five years ago, and it was also
18 drug-related.

19 THE COURT: All right. The fact that you sat as a
20 juror in that case, would that have any bearing upon you being
21 a fair and impartial juror in this case?

22 THE PANEL MEMBER: No, I don't believe so.

23 THE COURT: All right. Thank you very much.

24 Yes?

25 UNIDENTIFIED PANEL MEMBER: Yes, sir, Thomas

1 Gonzales. I served on a jury here in Lubbock, federal jury.
2 It's been about ten year ago. It was a civil.

3 THE COURT: All right, sir. The fact that you sat
4 on that jury, would that have any bearing upon you being a fair
5 and impartial juror in this case?

6 THE PANEL MEMBER: No, sir.

7 THE COURT: All right. Thank you very much.

8 All right. Anyone over here sat on a criminal jury
9 before? Yes. Your name?

10 UNIDENTIFIED PANEL MEMBER: Guadalupe Ruiz. I sat
11 on a jury to determine competency for an individual to stand
12 trial for the death of a child.

13 THE COURT: All right, sir. The fact that you sat
14 on that jury, would that have any bearing upon you being a fair
15 and impartial juror in this case?

16 THE PANEL MEMBER: No, sir.

17 THE COURT: All right. Thank you very much.

18 Have we missed anyone? All right.

19 Anyone on the jury panel who has ever served as a
20 member of a grand jury, as a member of a grand jury, either in
21 state or federal court? If so, please raise your hand.
22 Anyone? I take it none of you has.

23 Is there anyone on the jury panel or anyone in your
24 immediate family--by that, I mean your spouse, your parents, or
25 your children--who has ever been employed by or who is

1 presently employed by a law enforcement agency? Anyone in your
2 family--your immediate family who has ever been employed by a
3 law enforcement agency? All right. Let's come over here.
4 Give us your name, please.

5 UNIDENTIFIED PANEL MEMBER: Korey Anthony. My
6 stepmother, Lisa Anthony, works for the detectives here in
7 town.

8 THE COURT: All right. Would that have any bearing
9 upon you being a fair and impartial juror in this case?

10 THE PANEL MEMBER: No, sir.

11 THE COURT: All right. Thank you very much.

12 Anyone else? Coming on down-- Let's see. Yes,
13 sir. Your name?

14 UNIDENTIFIED PANEL MEMBER: Larry Bartholomew. My
15 son worked for the Lubbock County Sheriff's Department.

16 THE COURT: All right.

17 THE PANEL MEMBER: And he's no longer employed with
18 them now.

19 THE COURT: All right. The fact that he was
20 employed in that capacity, would that have any bearing upon you
21 being a fair and impartial juror in this case?

22 THE PANEL MEMBER: No, sir.

23 THE COURT: Thank you very much.

24 Yes, sir, back in the back.

25 UNIDENTIFIED PANEL MEMBER: Allen Weathers. My

1 father, Carl Weathers, was a Texas Ranger, now retired.

2 THE COURT: All right, sir. The fact that he was
3 employed in that capacity, would that have any bearing upon you
4 being a fair and impartial juror in this case?

5 THE PANEL MEMBER: No, sir. No, sir.

6 THE COURT: Thank you very much.

7 Yes, ma'am?

8 UNIDENTIFIED PANEL MEMBER: Kathlene Basinger. My
9 mom is a district court clerk in New Mexico.

10 THE COURT: All right. I guess, technically, that
11 wouldn't be a law enforcement agency, but the fact that she's
12 employed in that capacity, would that have any bearing upon you
13 being a fair and impartial juror?

14 THE PANEL MEMBER: No, sir.

15 THE COURT: All right. Yes, sir?

16 UNIDENTIFIED PANEL MEMBER: My son is a--he's a
17 police officer in Denver City, Texas.

18 THE COURT: All right. The fact that he's a police
19 officer, would that have any bearing upon you being a fair and
20 impartial juror in this case?

21 THE PANEL MEMBER: No, sir.

22 THE COURT: All right. Now-- Yes?

23 UNIDENTIFIED PANEL MEMBER: Stephanie Hadaway. My
24 ex-husband was a sheriff deputy for St. Charles Parish in
25 Louisiana.

1 THE COURT: In Louisiana? Would that have any
2 bearing upon you being a fair and impartial juror in this case?

3 THE PANEL MEMBER: No, it won't.

4 THE COURT: All right. Anyone else over here,
5 family member--immediate family member employed by law
6 enforcement? All right. Coming over here. Anyone? Let's
7 start right-- Yes, sir?

8 UNIDENTIFIED PANEL MEMBER: Aaron Rodriguez. I've
9 got an older brother that's a police officer in Plainview.

10 THE COURT: All right. The fact that he's employed
11 in that capacity, would that have any bearing upon you being a
12 fair and impartial juror in this case?

13 THE PANEL MEMBER: No, sir.

14 THE COURT: Thank you very much.

15 Someone else? Yes, ma'am.

16 UNIDENTIFIED PANEL MEMBER: Laura Quintana. My
17 mother-in-law works for the U.S. government district attorney.

18 THE COURT: Now, I didn't-- Would you speak up
19 just a little? What--

20 THE PANEL MEMBER: Laura Quintana. My
21 mother-in-law works for the U.S. government district attorney.

22 THE COURT: Oh, okay. And what is her name?

23 THE PANEL MEMBER: Zelma Medrano.

24 THE COURT: So she works here in this building?

25 THE PANEL MEMBER: Yes, sir.

1 THE COURT: All right. The fact that she's
2 employed in that capacity, would that have any bearing upon you
3 being a fair and impartial juror in this case?

4 THE PANEL MEMBER: No.

5 THE COURT: All right. Someone else over here?
6 Yes, sir.

7 UNIDENTIFIED PANEL MEMBER: Officer Jeremy
8 Thompson, Your Honor. Myself and my step-brother are both
9 employed by the Texas Department of Criminal Justice as
10 correctional officers. He has now--he has now resigned.

11 THE COURT: What facility are we talking about?

12 THE PANEL MEMBER: I work for the (inaudible) Unit,
13 sir. He worked for the Montfort Unit here in Lubbock.

14 THE COURT: Are you still employed in that
15 capacity?

16 THE PANEL MEMBER: I am, sir.

17 THE COURT: All right. The fact that you're
18 employed in that capacity, would that have any bearing upon you
19 being a fair and impartial juror in this case?

20 THE PANEL MEMBER: No, Your Honor.

21 THE COURT: Thank you very much.

22 THE PANEL MEMBER: Yes, Your Honor.

23 THE COURT: Have we missed anyone? All right.

24 At this point, I'm going to give the attorneys an
25 opportunity to ask supplemental questions. In asking these

1 questions, again, we're not trying to pry into your lives
2 unnecessarily; we're simply trying to get enough information to
3 select a jury for this case.

4 All right, Mr. Long.

5 MR. LONG: May it please the Court.

6 THE COURT: Yes, sir.

7 MR. LONG: Good morning.

8 PANEL MEMBERS: Good morning.

9 MR. LONG: That's pretty good. Not too bad for a
10 Monday morning.

11 As the Judge mentioned, this is voir dire, and it's
12 an opportunity for the Judge and the attorneys in the case to
13 ask you some questions. These questions may seem personal to
14 you, but please don't take them personally. We're trying to
15 figure out what your opinions are based on the subject matter
16 of this case to make sure you would be an appropriate juror for
17 the case.

18 So I won't get to call on every one of you, so what
19 that means is, if I ask a question and you have a strong
20 opinion, please don't be afraid to raise your hand and answer
21 that question to let us know what you're thinking. That could
22 be important to myself or Mr. Sloan.

23 But first, I have a preliminary question. It's tax
24 season. Let's do an exercise here. Who gets excited when they
25 get to file their taxes? Okay. So not very many of you. I'm

1 with those of you who didn't raise your hand. I don't get
2 excited to file taxes and I work for the government, so go
3 figure.

4 But I'm going to ask you a question, and it's
5 important that you think about this. Other than things like
6 having to pay your taxes, sometimes you may have had
7 interactions with the federal government that maybe caused you
8 some concern. And so what I mean by that is, have any of you
9 here ever been in a position where you had a claim from the
10 federal government placed against you? Maybe it was by the
11 IRS, maybe it was another government agency. We may have some
12 folks who work in farming and ranching, maybe work for federal
13 agencies that way. Is there anyone here who has had a negative
14 experience with a federal agency either making a claim against
15 them, or you had to make a claim against a federal agency? Is
16 there anybody here who falls in that category?

17 Okay. I don't see any hands, but if that comes to
18 mind or something comes to mind, please raise your hand and let
19 me know.

20 And another sort of general question, is there
21 anyone here who, for religious or moral reasons, would not be
22 able to sit in judgment of another person? In a criminal case,
23 if you're selected to be on this jury, ultimately the question
24 you're going to be asked is whether the government provided
25 enough evidence for you to find someone guilty of a crime,

1 which means you will be having to judge whether someone is
2 guilty of a crime. Again, anyone who, for moral or religious
3 reasons, would not be able to do that?

4 Okay. I don't see any hands.

5 The Judge already mentioned to you that this case
6 involves a charge, and what he read is called illegal re-entry
7 after deportation. So what that means is, this case is going
8 to involve you hearing some about the immigration laws of the
9 United States. Now, I watch the news. I know that's a pretty
10 hot-button topic right now. And so all of us, if you didn't
11 have an opinion about immigration before, you may have one now.
12 So what I want to point out to you first is a couple of things.

13 One, this is a criminal case. This is an
14 allegation of somebody violating the immigration laws in such a
15 way that they could be held criminally responsible. So what
16 that means is, if you're going to be selected as a juror in
17 this case, at no point are you going to be asked whether an
18 individual should be removed from the country or whether they
19 should be allowed to stay in the country. That would not be
20 the subject of a criminal case; that would be the subject of an
21 immigration proceeding, which is a totally separate proceeding,
22 a totally separate proceeding.

23 So I want to make that clarification, because I do
24 want to ask about your opinions with regard to the immigration
25 law, and we'll get there in just a moment. But I want to make

1 it clear to you that at no point, if you're selected to be a
2 juror in this case, are you going to have to make a decision
3 that says this person does or does not need to be removed from
4 the country. Does anybody have any questions about that?

5 Okay. I'll give you some more information, and if
6 you do have questions about that, please let me know.

7 So it's illegal re-entry after deportation, and the
8 Judge already read the charge to you. The basic elements are
9 that somebody was found in the United States and that they had
10 been previously found in the United States and ordered removed
11 by an immigration official or an immigration judge. So someone
12 had been here in the country before illegally; they had gone
13 before an immigration judge or an immigration officer, and a
14 decision was made to remove them from the United States.

15 Now, why somebody is removed from the
16 United States, which is the subject of a lot of debate, that,
17 you may not likely hear about in this case. Why somebody is
18 actually removed is not an element that the government has to
19 prove. What the government has to prove is, someone was here
20 previously illegally; a decision was made that they needed to
21 be removed from the country; and then they were later found to
22 have re-entered the country. It's illegal re-entry after
23 you've been deported.

24 Now, there's another element the Judge talked
25 about, which is that you didn't get permission to come back in.

1 So if you're removed from the country, there are steps and
2 procedures you can follow to get permission to apply to come
3 back in. So that's what that element is about. If someone is
4 found after coming back into the country after having been
5 removed, that's a crime. Okay?

6 So I'm going to kind of skip around a little bit,
7 if you'll bear with me. And, ma'am, I may say your last name
8 incorrectly. Is it Dipaolo?

9 PANEL MEMBER: Dipaolo.

10 MR. LONG: Dipaolo.

11 THE PANEL MEMBER: You were close.

12 MR. LONG: And please correct me if I say your last
13 name incorrectly. I probably will.

14 All right. So, Ms. Dipaolo, do you think illegal
15 re-entry after deportation--why do you think that's a crime?

16 THE PANEL MEMBER: Umm--

17 MR. LONG: Judge, do they need to stand up when
18 they respond, or do--

19 THE COURT: Yes.

20 THE PANEL MEMBER: Yeah, she had told us to.

21 MR. LONG: Yes, ma'am.

22 THE PANEL MEMBER: Because they didn't go through
23 the proper channels to get back in the country. They're
24 illegal.

25 MR. LONG: Okay. Ms. Alvarado, do you have any

1 thoughts about why illegal re-entry is a crime? What do you
2 think?

3 PANEL MEMBER: I think so because, like she said,
4 it's--there's steps to follow to--

5 THE COURT: You need to speak up now so we can hear
6 you.

7 THE PANEL MEMBER: There are steps that should be
8 followed to be allowed back in, so I think it is.

9 MR. LONG: Okay. And if you couldn't hear
10 Ms. Alvarado, she said-- And you can be seated, ma'am.

11 She said there's steps that you can follow to come
12 back in. So what do you think it does-- Let me see.

13 Mr. Anthony, what do you think it does to criminalize that
14 behavior if you don't follow the steps? Why do you think we
15 criminalize that? Why do we punish somebody for doing that?

16 PANEL MEMBER: Same reason why if I break--or walk
17 into somebody else's house uninvited, it's the same thing to
18 me. I mean, you need to be asked to come back into this
19 country or, like she said, follow the proper channels and do it
20 correctly.

21 MR. LONG: Yeah. Absolutely, absolutely. Thank
22 you, sir.

23 Is it Mr. Hill?

24 PANEL MEMBER: Yes, sir.

25 MR. LONG: Do you think that's a good law? Bad

1 law? Silly law? What are your thoughts?

2 THE PANEL MEMBER: I think it is a good law. I
3 know that illegal immigration is strong right now, and I know
4 that, you know, people aren't paying taxes that are here
5 illegally while everybody else is--they're keeping all of their
6 money, as to where we have to pay back our taxes.

7 MR. LONG: Sure. And if I can expound-- You can
8 sit down, sir.

9 If I can expound on that, one of the things that
10 getting permission to come into the country do--to do which
11 would allow you to be documented might be potentially to pay
12 taxes. I think that's, again, the subject of a lot of debate,
13 whether people should be let in the country if they're not
14 being documented, things like that.

15 Let me ask a more generalized question. Is there
16 anyone here who thinks that we shouldn't have any type of
17 restriction on being allowed to come into the country from
18 another country? So is there anybody here who thinks we
19 shouldn't have any type of immigration laws? And again, I'm
20 not here to change your opinion if that's how you feel. So if
21 you're watching the news and you see the different positions,
22 people, of course, have different positions on this. I don't
23 want to try to change your position. But I don't want to put
24 you in a position where you're a juror in this case being asked
25 to enforce immigration laws that maybe you don't agree with.

1 Is there anyone here who thinks that we should have
2 open borders and absolutely no immigration restrictions?

3 I'll jump over here for just a moment. I
4 apologize, I'll get these a little bit out of order. Is it
5 Mr. Garcia?

6 PANEL MEMBER: Rodriguez.

7 MR. LONG: Mr. Rodriguez. I apologize, I got the
8 wrong row here. Is it Aaron Rodriguez?

9 THE PANEL MEMBER: Yes, sir.

10 MR. LONG: What do you think about the idea of
11 having just open borders, no immigration laws?

12 THE PANEL MEMBER: I don't like it only for the
13 fact that--you know, I don't mind the Hispanic race, you know.
14 I'm Latin American as well. I do have family on that side of
15 the border. You know, as long as they come in--follow the
16 proper steps to come in, you know, they're more than welcome.
17 But as far as that side of the family, I'm sorry, you know--and
18 it's not so much the Hispanic race; it's everybody else. You
19 know, you got the refugees and stuff coming in and that--I--you
20 know, me, I'm going to take--I feel unsafe, you know, somebody
21 else, if that's gone. That's--

22 MR. LONG: Yes, sir. No, thank you. That's--
23 that's plenty.

24 Is there anyone here who feels--so let's ask the
25 opposite end of the spectrum, if anyone thinks there should be

1 open borders, no immigration laws. Is there anyone here who
2 thinks that the current immigration laws are too strict? Maybe
3 you're somebody that does have family in Mexico or Canada or
4 some other country and you hear stories about how difficult it
5 may be to get to the United States. Is there anyone here who
6 thinks the current state of the immigration laws are too
7 strict? And again, not trying to change your opinion; we'd
8 just like to know about that. Anyone, show of hands, think the
9 current set of immigration laws are too strict? Okay.

10 Back to my previous question about why illegal
11 re-entry is a crime. Let me just ask-- I apologize, I put my
12 list down. Come back over here a little bit. Is it
13 Ms. Banister?

14 PANEL MEMBER: Yes.

15 MR. LONG: Who do you think is responsible for
16 prosecuting immigration crimes? There's lots of prosecuting
17 authorities in the United States. You've got cities, you've
18 got counties, you've got potentially states, and you've got the
19 federal government. Of those choices, who do you think is
20 responsible for enforcing immigration crimes?

21 THE PANEL MEMBER: I think they all should.

22 MR. LONG: Okay.

23 THE PANEL MEMBER: I think everybody is-- It's
24 something that we really need to think about in this country,
25 you know, the safety of Americans. And that's basically my

1 opinion. You know, I just think we've all got to get together
2 and handle this issue.

3 MR. LONG: Yes, ma'am. You think there should be
4 some cooperation between all those agencies?

5 THE PANEL MEMBER: Yes. Every government, yes.

6 MR. LONG: Okay. Thank you, ma'am.

7 Well, I'm going to let you guys in--it's not really
8 a secret; it's just a fact. The immigration laws of the
9 United States are put in place by Congress. Okay? They are
10 the laws that are passed by your senators and legislators that
11 you elect.

12 Since they're federal laws, they have to be
13 enforced by federal agencies. And so what I mean by that, if
14 it's a crime to re-enter the country illegally after you have
15 been removed, that has to be enforced by federal agencies,
16 because that's a federal law. Is that confusing to anybody?
17 I'm trying to--I may be oversimplifying it, but what I mean is
18 this. If someone is going to be tried for the crime of illegal
19 re-entry after deportation, it has to be done by a federal
20 agency. Does anybody have questions about that?

21 The reason I mention that is this. Who has ever
22 heard the phrase, "Don't make a federal case out of it."
23 Right? Maybe in a conversation with a loved one or a child, a
24 co-worker, don't make a federal case out of it. And what do we
25 normally mean by that? Let me ask--is it Mr. Bronwyn--I'm

1 sorry, Ms. Bronwyn. Excuse me.

2 PANEL MEMBER: Ms. Shaw.

3 MR. LONG: Ms. Shaw. Man, I'm just getting that
4 all kinds of wrong. Ms. Shaw, what do we normally mean when we
5 say, don't make a federal case out of it?

6 THE PANEL MEMBER: Very extended conversations or
7 work or money. Every bit of our energy used extensively to do
8 something simple.

9 MR. LONG: Right. If you're pouring a lot of
10 resources--maybe using a sledgehammer to kill a gnat, probably
11 would be the easiest way I'd explain it.

12 THE PANEL MEMBER: Exactly, yes.

13 MR. LONG: Okay. Thank you, ma'am.

14 Anybody else disagree with, sort of, that idea?
15 Okay. Well, would it surprise you that, in an illegal re-entry
16 case, if it has to be tried by the federal government, one,
17 it's going to be a federal case. Just by definition, it's
18 going to be a federal case.

19 But would it surprise you if I told you it wouldn't
20 be uncommon to prove up that type of crime, that type of
21 violation with just a couple of witnesses and a handful of
22 documents? I can tell you that immigration, the way it's
23 tracked is normally document-intensive, meaning that documents
24 are generated, things are documented. That's why we call
25 people undocumented if they're in the United States. There's a

1 lot of documents that follow someone around if they're being
2 handled in the immigration system. So to figure out where
3 they've gone or where they have been sent, found, things of
4 that nature, lots of documents are involved. That's how that
5 would be proven.

6 Is there anyone here who thinks--using that
7 definition of what we all kind of hear about being a federal
8 case, is there anyone here who thinks we have to make a federal
9 case--I'll use the quotes--out of an illegal re-entry charge?
10 Meaning, if the government is going to prove that, they're
11 going to have to call three dozen witnesses and give me a
12 thousand-plus documents? Is there anyone here who feels that
13 way?

14 Some of you may be a little bit excited that I'm
15 telling you that this trial is not going to take three weeks.
16 In fact, you know, depending on how cases go, it may just take
17 a day or two. Is there anyone here who would say, if I don't
18 get to sit here for three weeks and hear evidence, no way I'm
19 going to find somebody guilty of a crime? Is there anyone here
20 who feels that way? It's okay if you do.

21 Okay. I don't see any hands.

22 The federal law enforcement agency that Mr. Felps,
23 who I have introduced to you--he works for--and I'm going to
24 read it and make sure I get it correctly--is Immigration
25 Enforcement and Removal Operations. Is there anyone here who

1 has ever had a negative experience with an immigration officer
2 or an immigration official, either yourself or a loved one?
3 Anyone here who has ever had a negative experience in that
4 regard? And again, okay if you have; just something we'd like
5 to know about.

6 Okay. I don't see any hands.

7 The last subject I want to talk to you just briefly
8 about is this idea of justification or duress. Sometimes in a
9 criminal case, the Court may allow a defendant to raise a
10 defense of justification or duress. What that means is, a
11 defendant is allowed to say, "I may have committed that crime
12 that you're accusing me of, but if I did, Jury, if you're going
13 to find me guilty of committing this crime, the reason I did it
14 is because, essentially, I was forced to. I was placed under
15 duress. I didn't have any other options." Okay? And so I
16 want to ask--I'm going to put maybe one of you on the spot
17 here. Mr. Patterson?

18 PANEL MEMBER: Yes.

19 MR. LONG: Can you think of a scenario--and it
20 doesn't have to be a federal crime; it can be shoplifting, bank
21 robbery, whatever. Can you think of a scenario where somebody
22 might say, "I committed that crime, but I was forced to. I was
23 placed under duress." Can you think of an example?

24 THE PANEL MEMBER: Maybe had to do it for their
25 family, I guess, I don't know, something like that.

1 MR. LONG: Okay. What do you mean by that, they
2 had to do it for their family?

3 THE PANEL MEMBER: Had to do something for their
4 family, maybe to feed them or get them out of danger, something
5 like that.

6 MR. LONG: Okay. Get them out of danger. Do you
7 think there should be circumstances where somebody has
8 committed a crime and they should be allowed to essentially go
9 free or not be held accountable because they were forced to do
10 it? Do you think that those circumstances exist?

11 THE PANEL MEMBER: They could.

12 MR. LONG: They could?

13 THE PANEL MEMBER: Yeah.

14 MR. LONG: Okay. And I kind of put you on the spot
15 there. Thank you, sir.

16 I like to use the example of a bank robbery. Okay?
17 A bank robbery where somebody comes to you or your loved one
18 and puts a gun to your head and says, "You got to go rob this
19 bank. You got to go rob this bank right now or I'm going to
20 kill you." So there's a situation where somebody is being
21 forced to break the law. Okay? What sorts of things--is it
22 Ms. Blackwell? Ms. Blackwell?

23 PANEL MEMBER: Yes, sir.

24 MR. LONG: What sorts of things would you want to
25 know about whether somebody who robs a bank under duress or

1 justification--what sorts of things would you want to know
2 about that threat or what was going on as to whether they
3 should be able to get away with a bank robbery because they
4 were under duress? What sort of things would you want to know?

5 THE PANEL MEMBER: I mean, I think they would have
6 to have a gun to their head in order to have an excuse. We all
7 have a brain and a mind, and if you made the decision yourself,
8 then--I mean, if it was not life-threatening, I think it's your
9 fault.

10 MR. LONG: Sure. And let me follow up with this
11 question. Do you think someone should be allowed to rob a
12 bank, run away, essentially get away with it, and then after
13 detectives finally catch up with them through whatever evidence
14 they find, the guy goes--or girl--says, "I know I robbed a
15 bank, but I only did it because somebody forced me to."

16 THE PANEL MEMBER: No.

17 MR. LONG: Do you think that would be common if
18 people could just say that and get away with it?

19 THE PANEL MEMBER: No, they shouldn't be able to.

20 MR. LONG: Okay. You can have a seat. Thank you,
21 ma'am.

22 And I won't belabor it too much. You're all
23 correct, and you're correct especially, when you mention that
24 they should have to show something. It should be an immediate
25 threat.

1 If the Court allows such defense to be put in front
2 of the jury, then there are four things--the government
3 normally has to prove the case, but there are four things a
4 defendant has to prove in order for a duress claim to be
5 substantiated, in order for a jury to consider that. Okay? So
6 you can't just get caught and say, "Oh, you know, I'm sorry I
7 got caught, but somebody else made me do it." Right? If that
8 was a get-out-of-jail-free card, we'd probably hear it quite a
9 bit, would be my guess.

10 But there are four things that a defendant would
11 have to prove to claim duress. The first is, the defendant was
12 under an unlawful present, imminent, and impending threat of
13 such a nature as to induce a well-grounded fear of death or
14 serious bodily injury to himself or a family member.

15 Now, that's a mouthful, but I anticipate, if you
16 are instructed on that, that will be what the element would
17 sound like. So that first element is immediate serious threat.
18 Okay? And that's what you were just talking about. There has
19 to be an immediate serious threat.

20 So in that bank robbery example, if someone calls
21 me on the phone and says, "If you don't go rob this bank, I'm
22 going to shoot you." Let me ask you, Ms. Harrison. Where is
23 Ms. Harrison at? I'm sorry. Ms. Harrison, would that be an
24 immediate threat, a present, impending threat if someone just
25 calls you on the phone to say, go rob a bank?

1 PANEL MEMBER: No.

2 MR. LONG: No? Why not?

3 THE PANEL MEMBER: Because you don't have a threat.

4 MR. LONG: Yeah, there's no one there telling you
5 to do it.

6 THE PANEL MEMBER: It's just words.

7 MR. LONG: Just words. Could be a stranger, who
8 knows. Right?

9 THE PANEL MEMBER: Uh-huh.

10 MR. LONG: All right. Thank you, ma'am.

11 The second element quickly is that the defendant
12 had not recklessly or negligently placed himself in a situation
13 in which it was probable that he would be forced to choose the
14 criminal conduct. Okay? So you can't put yourself in the
15 situation where that's likely going to happen.

16 So I would use the bank robbery example. Let's say
17 me and my friends go rob a bunch of banks and I decide I don't
18 want to rob the next bank. And then my friend says, "Well,
19 you'd better rob the bank, you're the driver," and he holds a
20 gun to me. In that circumstance, I have put myself in that
21 situation by, well, one, associating myself with bank robbers.
22 So you can't--you can't create the duress, is basically what
23 that says. Does that make sense to everybody? All right. So
24 it has to be an immediate, present, serious threat. You can't
25 have put yourself in that situation. Okay?

1 Third, the defendant had no reasonable legal
2 alternative to violating the law. That is, he had no
3 reasonable opportunity to avoid the threatened harm. All
4 right. So let me ask--I'm trying to jump around as best I can,
5 give everyone an opportunity. I know you all want to be called
6 on. Ms. Cox here on the third row? Ms. Cox? Yes, ma'am.
7 Would it make a difference if somebody held a gun to my head
8 and said, "You'd better go rob the bank," but as I'm walking to
9 the bank, I have to pass, let's say, three or four police
10 stations before I get to the bank. Would that make a
11 difference?

12 PANEL MEMBER: Yes.

13 MR. LONG: Why?

14 THE PANEL MEMBER: Because I could stop there and
15 maybe stop it.

16 MR. LONG: Yeah, absolutely. You would, in that
17 circumstance, have a reasonable alternative, because you can go
18 to the police station and avoid the harm. Would that be a fair
19 statement?

20 THE PANEL MEMBER: Yes.

21 MR. LONG: Now, we can tweak those facts a little
22 bit in different ways, but if I'm the one being threatened and
23 I have an opportunity to avoid the threat without breaking the
24 law, that would be what this third element calls an available
25 reasonable legal alternative to violating the law.

1 THE PANEL MEMBER: Yes, sir.

2 MR. LONG: Thank you, ma'am.

3 So again, impending threat, serious threat; can't
4 have put yourself in harm's way; and you can't have had any
5 other legal alternatives. Because if you have another legal
6 alternative, then you don't have to break the law. Okay?

7 And then the last one is that a reasonable person
8 would believe that, by committing the criminal action, they
9 would directly avoid the harm. It kind of goes with the last
10 one. You have to--a reasonable person has to believe that the
11 only way for me to avoid this harm is to break the law.

12 Does anyone have questions about duress?

13 Does anyone have any questions about immigration
14 law or any of the immigration topics that we have discussed so
15 far?

16 Any general questions of me?

17 Okay. I appreciate your time. Thank you.

18 THE COURT: All right, Mr. Sloan.

19 MR. SLOAN: Thank you, Your Honor.

20 I'd like to follow up on some of the questions
21 Mr. Long was just asking. First of all, I do want to let you
22 know, in this case, we will most definitely be talking about
23 the legal principle of duress justification. And it's the idea
24 that you commit a crime because you're forced to commit a
25 crime, because you don't have another legal alternative.

1 And I agree with Mr. Long's definition. Duress is
2 a little different, though, than the elements of a crime. The
3 elements of a crime, those are the things the government has to
4 prove. And when they prove it, they have to prove it by a
5 burden of proof called beyond a reasonable doubt, and beyond a
6 reasonable doubt is the highest burden of proof in the law.
7 And the reason for that is, you know, when they set up the
8 legal system in this country, the people who set that up wanted
9 to make sure that everybody charged with a crime had the utmost
10 protection against the government in a criminal case.

11 On the other hand, a defensive issue like duress,
12 the burden of proof is not beyond a reasonable doubt. There's
13 four elements to duress, and Mr. Long sort of spelled them out,
14 and I'll go into those in a little more detail. But first of
15 all, to start with, those elements are things that the
16 defendant need only prove by what's called a preponderance of
17 the evidence, more likely than not that those elements are met.
18 Okay?

19 So let me ask you, Ms. Alvarado--and if you can
20 speak up. I know you've got kind of a quiet voice. Just yell
21 at me like I'm a 3-year old if you don't mind. No, you
22 shouldn't yell at a 3-year old.

23 If the Judge instructs you that if the elements of
24 duress are met and they are more than likely true in this case,
25 and the Judge instructs you to find that if they are met, that

1 you need to find the defendant not guilty, could you do that,
2 even knowing that he crossed the border illegally?

3 PANEL MEMBER: I believe so.

4 MR. SLOAN: Okay. Do you understand that the
5 defense of duress is just as much a part of the law as the law
6 that says you can't cross the border illegally?

7 THE PANEL MEMBER: Yes.

8 MR. SLOAN: Does everybody agree with that-- You
9 can have a seat. Thank you.

10 Does everybody agree with that? Does anybody think
11 that shouldn't be the law?

12 Does anyone think that--you know, because duress
13 sounds like you're making an excuse. Right? Does anybody feel
14 like, well, you shouldn't be able to make an excuse for
15 anything. Does anybody feel like that? All right.

16 Let's see. Where's Mr. Hill? Mr. Hill, you talked
17 a little bit about immigration law. Have you ever lived in
18 another country?

19 PANEL MEMBER: No, sir.

20 MR. SLOAN: All right. Can you imagine that there
21 are places in the world where the rule of law is not respected?

22 THE PANEL MEMBER: I can.

23 MR. SLOAN: Okay. Can you imagine there's places
24 in the world where maybe going to local police isn't really an
25 option?

1 THE PANEL MEMBER: I can.

2 MR. SLOAN: Okay. Is anybody keeping up-- Thank
3 you very much.

4 Is anybody keeping up with, like, what's going on
5 in the Middle East, places that are grabbed by outfits like
6 ISIS and stuff like that? Let's see. Ms. Pyle?

7 PANEL MEMBER: Yes.

8 MR. SLOAN: Could you please stand up? Ms. Pyle,
9 if you lived in a place in the world that was controlled by an
10 outfit like ISIS, do you think that going to ISIS for
11 protection would be a good idea?

12 THE PANEL MEMBER: No.

13 MR. SLOAN: Okay. Do you think your safety might
14 be a little different than it is here in the United States?

15 THE PANEL MEMBER: If I went to ISIS, no, I
16 wouldn't have no protection.

17 MR. SLOAN: What I mean is, if you lived in a place
18 where ISIS was in charge--

19 THE PANEL MEMBER: Uh-huh.

20 MR. SLOAN: --do you think that your safety might
21 be a little different than it is here in the U.S.?

22 THE PANEL MEMBER: Yes.

23 MR. SLOAN: Okay. Thank you.

24 Justification is a principle in the law that goes
25 back from the very beginning. It's not some newfangled deal.

1 It's not some sort of a trick. Let's see. Is it Mr. Diggs?

2 PANEL MEMBER: Yes, sir.

3 MR. SLOAN: What do you feel about making an excuse
4 if you had to do something because your life is in peril? Do
5 you think you ought to be able to, you know, come in front of
6 your friends and a jury of your peers and say, you know what,
7 this is what happened, my life was in peril. Do you think you
8 ought to be able to do that?

9 THE PANEL MEMBER: Sure.

10 MR. SLOAN: Do you think that you ought to ask them
11 to listen?

12 THE PANEL MEMBER: Sure.

13 MR. SLOAN: Do you think that's fair?

14 THE PANEL MEMBER: Yes, sir.

15 MR. SLOAN: Let me give you an example. Let's say
16 you're crossing a bridge and you're going 75 miles an hour.
17 And up ahead of you, you know, some trucker veers into the
18 guardrail and he jackknives, and he just instantly stopped and
19 he's on fire. You know it's illegal to go into the other lane
20 of traffic. Right?

21 THE PANEL MEMBER: Yes, sir.

22 MR. SLOAN: You think it would be all right for you
23 to do that to keep from running into his back end and catching
24 on fire yourself?

25 THE PANEL MEMBER: Yes, sir.

1 MR. SLOAN: Okay. Do you think that you should
2 have an excuse in the law for that?

3 THE PANEL MEMBER: Yes, sir.

4 MR. SLOAN: All right. Thank you.

5 Now, the four elements of duress, which I'm hoping
6 that the Judge will instruct you, are that the defendant was
7 under an unlawful present, imminent, and impending threat of
8 such a nature as to induce a well-grounded fear of death or
9 serious bodily injury to himself or to a family member.

10 Let me ask the panel generally, does everybody
11 agree that being under an impending threat of death, either
12 yourself or a family member, should sort of change the way you
13 look at your conduct? Does anybody think that that's not fair,
14 that, you know, it doesn't matter; you should obey the law no
15 matter what? Okay.

16 The second element of duress is that you hadn't
17 placed yourself recklessly or negligently in a situation in
18 which it was probable that you would be forced to choose the
19 criminal conduct. All right. And so what they're talking
20 about is that you may have placed yourself in a situation--you
21 know, you happened to be there where duress could happen to
22 you, but it wasn't something you did recklessly or negligently.

23 Let me see if I can sort of figure that out, and
24 I'm going to--I'm going to go back to you, Mr. Diggs. Driving
25 down that highway, you're driving the speed limit. You placed

1 yourself in that car, didn't you?

2 THE PANEL MEMBER: Yes, sir.

3 MR. SLOAN: All right. You placed yourself on that
4 highway, didn't you?

5 THE PANEL MEMBER: Yes, sir.

6 MR. SLOAN: All right. And you were driving to a
7 place; you decided to go there. Right?

8 THE PANEL MEMBER: Yes, sir.

9 MR. SLOAN: Okay. Do you think you should still
10 have an excuse for avoiding that wreck, even though you placed
11 yourself there?

12 THE PANEL MEMBER: Yes, sir.

13 MR. SLOAN: Okay. Because it wasn't anything
14 reckless or negligent about you being there. You were there,
15 just there. Right?

16 THE PANEL MEMBER: Yes, sir.

17 MR. SLOAN: Okay. Does that make sense to
18 everybody? Okay. All right. Thank you, Mr. Diggs, and I'm
19 going to quit picking on you if that's all right.

20 The third element is that the defendant had no
21 reasonable legal alternative to violating the law, that is, he
22 had no reasonable opportunity to avoid the threatened harm.
23 And, let's see, it's Stacie Poe? Stacie--or, I'm sorry,
24 Ms. Poe, the question about having no reasonable legal
25 alternative, okay, let's suppose you're in that situation that

1 Mr. Long talked about where the bank robber is pointing a gun
2 to your head and saying you've got to go rob that bank. Right?
3 He's in the back of your car, and you're on your way to the
4 bank and you decide, I'm not going to rob that bank. And all
5 the other legal--there's no police stations on the way.
6 There's not a telephone threat. I mean, it's a real threat
7 pointed at your head, and you say, I'm not going to rob that
8 bank; instead, I'm going to run my car into this group of
9 preschoolers over here, because then I know the cops will come
10 and they'll get me out of this situation.

11 Do you understand that's not a legal alternative?

12 PANEL MEMBER: (Nods head up and down.)

13 MR. SLOAN: Okay. So you could be threatened to do
14 something, and choosing to do it is responding to that threat.
15 Does that make sense?

16 THE PANEL MEMBER: Yes.

17 MR. SLOAN: Okay. Thank you.

18 And the last element is that a reasonable person
19 would believe that, by committing the criminal action, he would
20 directly avoid the threatened harm. Let's see. Ms. Gray?

21 PANEL MEMBER: Yes.

22 MR. SLOAN: Let's suppose it's you in the car and
23 not Mr. Diggs this time. And you look over into that oncoming
24 lane of traffic where it's illegal for you to go, and it's
25 clear for miles. Would it make sense that going into that

1 traffic is a reasonable alternative that's going to avoid the
2 wreck?

3 THE PANEL MEMBER: Yes.

4 MR. SLOAN: Okay. Would it make more sense to go
5 into that lane of traffic than, say, plowing into the
6 guardrail?

7 THE PANEL MEMBER: Yes.

8 MR. SLOAN: Or driving off into the bar ditch or
9 going out in the median? Would it make more sense just to go
10 into that oncoming lane of traffic--

11 THE PANEL MEMBER: Any way that you could be clear
12 of adding to the accident, I would say, would be permissible.

13 MR. SLOAN: Okay. All right. Thank you.

14 Folks, it's my job to make sure that my
15 client, Rafael Marin, gets a fair trial, and I need to ask some
16 questions, and I want you to understand, I can't read minds.
17 I've only met you this morning. And even if I had known you
18 for a while, I probably still couldn't read your minds.

19 My client is a Mexican citizen, but he was raised
20 in the United States. The fact that my client does not--is not
21 a U.S. citizen, is there anyone who feels like he shouldn't be
22 entitled to the same kind of fair trial that a U.S. citizen
23 would be entitled to? Does anybody feel that way? Okay. I
24 take it by no hands that nobody feels that way.

25 Now, my client is Hispanic, and there's something I

1 have to deal with, which is racism. It still exists. And I
2 don't have a judgment about that. But what I will say is this:
3 If--Mr. Diggs, if you're--I told you I wouldn't pick on you
4 again. I'm not going to call on you. I'm going to call on,
5 let's see, Gloria Pyle.

6 PANEL MEMBER: Yes.

7 MR. SLOAN: I'm going to call on you again. If you
8 are selected on the jury and you're in the room with those
9 other folks, would you do your best to try to keep racism out
10 of the deliberations?

11 THE PANEL MEMBER: Yes.

12 MR. SLOAN: Okay. Would everybody agree to that?
13 Is there anybody who wouldn't agree to that, that racism
14 shouldn't have any place in your deliberations? Thank you.

15 THE PANEL MEMBER: Uh-huh.

16 MR. SLOAN: Anybody here served in the military,
17 U.S. military? All right. I'll pick someone besides you.
18 Let's see. Is it Stephanie Hadaway?

19 PANEL MEMBER: Yes.

20 MR. SLOAN: You served in the U.S. military?

21 THE PANEL MEMBER: Yes, sir.

22 MR. SLOAN: What branch?

23 THE PANEL MEMBER: Army.

24 MR. SLOAN: Okay. You were in the Army? All
25 right. My client served in the United States Marine Corps. Do

1 you have bad feelings about the Marines because you're in the
2 Army?

3 THE PANEL MEMBER: No, sir.

4 MR. SLOAN: Okay.

5 THE PANEL MEMBER: I'm sorry, I'm laughing because
6 all my family is all branch of the military.

7 MR. SLOAN: Okay. So you have family that are in
8 the Marines?

9 THE PANEL MEMBER: Yes, sir.

10 MR. SLOAN: Okay. So you could be fair towards the
11 Marines?

12 THE PANEL MEMBER: Yes, sir.

13 MR. SLOAN: Is there anybody here who couldn't,
14 because they're either in another branch of service or just
15 don't like military personnel? Anybody that has a problem with
16 that? Okay. Thank you.

17 Is it William Scott?

18 PANEL MEMBER: Yes.

19 MR. SLOAN: William, I'm going to be bringing in an
20 investigator who works down in Del Rio to talk about the
21 situation in Mexico and the way things are in Mexico. Do you
22 have any personal knowledge about anything that's going on down
23 there?

24 THE PANEL MEMBER: No.

25 MR. SLOAN: All right. Would you be open to hear

1 about the situation down there if it was part of this case?

2 THE PANEL MEMBER: Absolutely.

3 MR. SLOAN: All right. Thank you.

4 Is there anybody on the panel who has personal
5 knowledge of either the political or the violence or anything
6 like that in the Country of Mexico?

7 UNIDENTIFIED PANEL MEMBER: I've got--I know a
8 little bit.

9 MR. SLOAN: All right. And--

10 THE PANEL MEMBER: Would you like me to stand?

11 MR. SLOAN: Yes. Is it Mr. Ruiz?

12 THE PANEL MEMBER: Rodriguez.

13 MR. SLOAN: Oh, Mr. Rodriguez. Okay. All right.
14 You're the next one--next one in line with Mr.-- You say you
15 have personal knowledge? Have you been to Mexico recently?

16 THE PANEL MEMBER: Yes.

17 MR. SLOAN: Okay. And you have personal knowledge
18 of what? The political situation or--

19 THE PANEL MEMBER: Just the violence.

20 MR. SLOAN: The violence? Okay. Would you say
21 there's a lot of violence down there?

22 THE PANEL MEMBER: Depends on what part of Mexico
23 you go to.

24 MR. SLOAN: Okay. Are there places in Mexico that
25 are violent?

1 THE PANEL MEMBER: Yes.

2 MR. SLOAN: What about, like, the border? Do you
3 know about that?

4 THE PANEL MEMBER: The border?

5 MR. SLOAN: The border, the Texas/Mexican border.

6 THE PANEL MEMBER: Yeah, the violence there is
7 really kind of--is kept down.

8 MR. SLOAN: Okay. All right. Thank you.

9 Is there anyone else? All right. And you're--

10 UNIDENTIFIED PANEL MEMBER: I'm Mr. Ruiz.

11 MR. SLOAN: Okay. You're Mr. Ruiz, the next
12 gentleman.

13 THE PANEL MEMBER: I had--my uncles live in
14 Coahuila, which is across the border from Eagle Pass, and we
15 stay in constant contact with them. And their statements are
16 that the law is crooked, the politicians are crooked, and the
17 drug cartel kind of rules the roost, and they kind of do--

18 MR. SLOAN: Well, is it--the drug cartels rule the
19 roost is what your uncles are telling you?

20 THE PANEL MEMBER: Yeah.

21 MR. SLOAN: If you're selected on the jury, would
22 you agree that your personal--I mean, when you're in a jury
23 trial, the evidence you hear from the witnesses, that's what
24 you're supposed to base your verdict on.

25 THE PANEL MEMBER: Right.

1 MR. SLOAN: All right. And would you agree that
2 your personal stories or your personal history--if you're
3 selected on the jury panel, that what you know is not really
4 evidence for you to bring in. Is that--

5 THE PANEL MEMBER: That's right.

6 MR. SLOAN: Okay. And I would ask, if anyone with
7 personal knowledge of the situation in Mexico--is--can
8 everybody agree to that-- Thank you. Can everybody agree to
9 that, that they would listen and decide their verdict on the
10 evidence that they hear?

11 All right. Thank you. I appreciate your time this
12 morning.

13 THE COURT: All right, Counsel. Approach the bench
14 and bring your lists.

15 -----

16 (AT THE BENCH)

17 THE COURT: Okay. So we're operating with the same
18 list, Number 23 is absent.

19 I propose to excuse Number 9. Any objection?

20 MR. LONG: No objection.

21 MR. SLOAN: No objection.

22 THE COURT: All right. She's excused.

23 Okay. Any challenges for cause?

24 MR. LONG: Not from the government, Your Honor.

25 MR. SLOAN: None from the defense.

1 THE COURT: All right. That will put us down
2 through Number 30. The government will get six preemptories;
3 defense gets ten. I'll give you 15 minutes.

4 MR. SLOAN: Thank you.

5 -----

6 (IN OPEN COURT)

7 THE COURT: Members of the jury, we're going to
8 take a 15-minute recess. During that period of time, you may
9 leave the courtroom, if you wish, but don't talk about this
10 case among yourselves or with anyone else. At five minutes
11 after 10:00, please be back in the courtroom and be seated
12 where you're presently situated.

13 Court will stand in recess.

14 (RECESS TAKEN)

15 THE COURT: All right. Listen carefully. If your
16 name is called, please come forward and have a seat in the jury
17 box.

18 COURTROOM DEPUTY: Donald Wade Johnson, Peggy Lynn
19 Jones, Sherika Cantrice Washington, Monica Marie Alvarado,
20 Gloria Pyle, Jean Rollins Gray, Glenda Sue Cox, Amy Don Bell,
21 Kerry Todd Siders, Billy Joe Mojica, Stacie Valdez Poe, Norman
22 Keith Patterson.

23 (THE JURORS ARE SEATED IN THE JURY BOX)

24 THE COURT: All right. If your name was not
25 called, then obviously you were not selected to serve on this

1 particular jury, but it was very important that each one of you
2 be here this morning for voir-dire examination.

3 If you're not serving on this jury, the rest of you
4 are now excused. Thank you very much.

5 (THE PANEL MEMBERS EXIT THE COURTROOM)

6 THE COURT: All right. Be seated, please.

7 All right. Those of you who have been selected on
8 this jury, if you would please stand and raise your right
9 hands, we need to give you an additional oath.

10 (THE JURORS ARE SWORN)

11 THE COURT: Please be seated.

12 Members of the jury, now that you have been sworn,
13 I want to give you some preliminary instructions to guide you
14 in your participation in this trial.

15 It will be your duty to find from the evidence what
16 the facts are. You and you alone are the judges of the facts.
17 You will then have to apply to the facts the law that I will
18 give to you at a later point in the case. You must follow that
19 law whether you agree with it or not.

20 Now, nothing that I may say or do during the course
21 of this trial is intended to indicate to you what your verdict
22 should be. The evidence from which you will find the facts
23 will consist of the testimony of witnesses, documents and other
24 things received into the record as exhibits, and any facts that
25 the lawyers agree or stipulate to or that the Court may

1 instruct you to find.

2 Now, certain things are not evidence and must not
3 be considered by you. These include the following:

4 Number one, statements, arguments, and questions by
5 lawyers are not evidence.

6 Number two, objections to questions are not
7 evidence. Lawyers have an obligation to their clients to make
8 an objection when they believe the evidence being offered is
9 improper under the rules of evidence. You should not be
10 influenced by the objection or by the Court's ruling on it. If
11 the objection is sustained, ignore the question. If it is
12 overruled, then treat the answer like any other. If you are
13 instructed that some item of evidence is received for a limited
14 purpose only, you must follow that instruction.

15 Next, testimony that the Court has excluded or told
16 you to disregard is not evidence and must not be considered.

17 Next, anything you may have seen or heard outside
18 the courtroom is not evidence and must be disregarded. You are
19 here to decide this case solely on the evidence presented here
20 in this courtroom.

21 Now, there are two kinds of evidence: direct and
22 circumstantial. Direct evidence is direct proof of a fact,
23 such as testimony of an eyewitness. Circumstantial evidence is
24 proof of facts from which you may infer or conclude that other
25 facts exist. I will give you further instructions on these, as

1 well as other matters, at the end of the case, but have in mind
2 that you may consider both kinds of evidence.

3 Now, it will be up to you to decide which witnesses
4 to believe, which witnesses not to believe, and how much of any
5 witness's testimony to accept or reject. I will give you some
6 guidelines for determining the credibility of witnesses at the
7 end of the case.

8 As you know, this is a criminal case. Again, there
9 are three basic rules about a criminal case that you must keep
10 in mind.

11 First, the defendant is presumed innocent until
12 proven guilty. The indictment against the defendant brought by
13 the government is only an accusation, nothing more. It is not
14 proof of guilt or anything else. The defendant, therefore,
15 starts out with a clean slate.

16 Second, the burden of proof is on the government
17 until the very end of the case. The defendant has no burden to
18 prove his innocence or to present any evidence or to testify.
19 Since the defendant has the right to remain silent, the law
20 prohibits you, in arriving at your verdict, from considering
21 that the defendant may not have testified.

22 Third, the government must prove the defendant's
23 guilt beyond a reasonable doubt.

24 Now a few words about your conduct as jurors.

25 First, I instruct you that, during the trial, you are

1 not to discuss this case with anyone. Until you retire to the
2 jury room at the end of the case to deliberate on your verdict,
3 you're simply not to talk about this case. Furthermore, do not
4 talk to any of the lawyers, the witnesses, or parties involved
5 in the case. I know that most of you use cell phones, iPhones,
6 Blackberrys, Internet, and other tools of technology. You must
7 not use these tools to communicate with anyone about this case.

8 Second, do not read or listen to anything touching on
9 this case in the way of news accounts or other publicity.

10 Third, do not try to do any research or make any
11 investigation about the case on your own.

12 Fourth, do not form any opinion until all of the
13 evidence is in. Keep an open mind until you start your
14 deliberations at the end of the case.

15 Finally, do not try to take any notes. Just listen
16 carefully to the evidence as it comes into the case.

17 I will now give the lawyers an opportunity to make
18 their opening statements. The purpose of opening statements is
19 to outline for you what they believe the evidence will show.
20 Mr. Haag?

21 MR. HAAG: Thank you very much, Your Honor.

22 Good morning, Ladies and Gentlemen of the Jury. I
23 know you're excited to be the lucky twelve. Welcome to federal
24 jury service. I believe that this will be a short trial.
25 There's no such thing as an easy criminal case. There's not.

1 Anytime someone's liberty is at stake, it's a matter that
2 requires your careful evaluation and your careful deliberation.
3 But there are cases that are clear, straightforward, and
4 direct, and this is going to be one of those cases.

5 This is an illegal re-entry case. You'll be
6 looking for four things here today:

7 Number one, is the defendant an alien; in other
8 words, is he a citizen and national of a country other than the
9 United States of America.

10 Number two, was the defendant removed or deported
11 from the United States of America.

12 Number three, after that deportation or removal,
13 was the defendant found in the United States of America.

14 And, four, at the time the defendant was found in
15 the United States of America, had he not received the express
16 consent of the Attorney General to apply for readmission to the
17 United States. That mouthful of language, what that basically
18 means is, did immigration authorities tell the defendant, "You
19 can come back into the United States. We are allowing you back
20 into the United States." That's all it means.

21 We believe the evidence in this case is going to
22 show the following: Agent Lonnie Felps with Immigration
23 Enforcement and Removal Operations had identified the defendant
24 as a person who was illegally in the United States on September
25 the 13th of 2015.

1 On October the 16th of 2015, Agent Felps took the
2 defendant, Rafael Marin-Pina, to his office at the Eden
3 substation for processing. At the Eden station, he placed him
4 on what's called AFIS or IAFIS, and what that is, is he places
5 the defendant's fingerprint on a computer scanner; the scanner
6 reads that individual's fingerprint and identifies the person
7 to the agent. The fingerprint positively identified him as the
8 defendant, Rafael Marin-Pina. With the fingerprint, Agent
9 Felps was able to pull up all the information about the
10 defendant's encounters with immigration authorities.

11 Agent Felps informed the defendant of his
12 constitutional rights. The defendant agreed to waive his
13 rights and speak with Agent Felps. He admitted to Agent Felps,
14 "I am a Mexican citizen, born in Mexico City, Mexico." He
15 admitted to Agent Felps he had previously been deported from
16 the United States of America.

17 Agent Felps already knew that he was in the
18 United States of America because he took custody of him, but
19 the defendant admitted, "I illegally re-entered the
20 United States. I can't tell you when or how, but I did
21 illegally enter the United States."

22 And finally, he admitted to Agent Felps, "At the
23 time that I entered and all the time subsequent to that, I did
24 not have permission of immigration authorities to come back
25 into the United States of America."

1 Agent Felps, with this information, turned to the
2 defendant's A-file. Now, an A-file is an alien registration
3 file, and all that is, is a file folder somewhat similar to
4 this one, and in it are all contacts between an alien--in other
5 words, a citizen or national of a country other than the
6 United States--and either immigration or law enforcement
7 authorities. And every time they come in contact, that
8 paperwork is placed in this file.

9 Agent Felps obtained the file, and looking through
10 the file, he confirmed everything that the defendant had
11 already told him. He was able to find the defendant's birth
12 certificate, which, in fact, showed he was born in Mexico City,
13 Mexico. He was able to find the I-205, warrant of deportation.
14 And what that form is, is, anytime someone is removed or
15 deported from the United States, it is done with what's called
16 a warrant of removal or warrant of deportation, and it's an
17 order of the immigration judge to immigration authorities
18 saying, "You are to take this person and you are to remove them
19 from the United States." And on the I-205, the immigration
20 authority will sign his name and he'll roll the fingerprints of
21 the person that he deported from the United States.

22 You are going to hear testimony from Detective
23 Garland Timms of the Lubbock Police Department, who is going to
24 tell you, "I looked at the I-205, the prior deportation of the
25 defendant. I looked at the fingerprints taken from the

1 defendant by Agent Felps, and they are a match. He is, beyond
2 any doubt, the person removed from the United States on August
3 the 7th, 2008."

4 Finally, Agent Felps looks through the entire file,
5 he looks through two different databases, and he determined, no
6 immigration authority anywhere had given the defendant
7 permission to re-enter the United States since he was deported
8 on August the 7th, 2008.

9 I think, in response to this overwhelming evidence,
10 the defendant is going to try and make a claim of what's called
11 duress and coercion. And we've talked a little bit about that
12 already. I urge you to carefully evaluate the evidence that
13 comes before you. As you do so, I ask you to keep two things
14 in mind.

15 Number one, duress is a very, very, very strict
16 defense, and rightfully so. It requires, first, a present,
17 imminent, and impending threat of death or serious bodily
18 injury. It also requires no reasonable legal alternative. In
19 other words, in that moment, at that crucial, critical time, I
20 had no choice but to break the law.

21 And I ask you, as this evidence comes on, to look
22 for that and ask yourself, has the defendant shown that by a
23 preponderance of the evidence.

24 After bringing you the overwhelming evidence of the
25 defendant's guilt of the crime charged and showing to you

1 clearly that he cannot possibly establish a duress or coercion
2 defense, I'm going to ask you for the only possible verdict in
3 this case. I'm going to ask you to find the defendant guilty.
4 Thank you.

5 THE COURT: Mr. Sloan?

6 MR. SLOAN: Thank you, Your Honor.

7 This is a case of mistaken identity. I've always
8 wanted to say that. And it is. Let me tell you how we get
9 there.

10 The evidence is going to show that Rafael came into
11 the country at age three--came into the United States at age
12 three, went to United States schools, enlisted in the Marines
13 as a lawful permanent resident. He was not a U.S. citizen.
14 English is his first language. He was here legally.

15 In 1997, he got in trouble with the law, and in
16 1999, he was deported from the United States for a conviction
17 for something called an aggravated felony. And because of that
18 conviction, he lost his right to be in this country.

19 Between 1999 and 2008, he tried to come back, got
20 married, had kids. He wound up getting re-deported in 2008,
21 and that's the one that Mr. Haag was talking about. And every
22 time he came here, he got caught and sent back.

23 In 2007, he gave up on that idea--or in 2008, he
24 gave up on that idea and decided to make a life for himself in
25 Mexico. He and his family wound up in Acuna, and Acuna is a

1 border town across from the City of Del Rio on the South Texas
2 border. And his U.S. citizen kids were crossing the border
3 every day to go to U.S. schools in Del Rio. Because his wife
4 is a U.S. citizen, his children were born in the United States,
5 they're all U.S. citizens, and he didn't want them in Mexican
6 schools.

7 It was a problem. The problem is, his Spanish is
8 American Spanish. He has an accent just like you would know
9 somebody's accent from New York. In Mexico, they knew he was
10 from the United States. He looks like a military guy. He
11 walks like a military guy. He looks like a policeman. He had
12 a German Shepherd, which is a police dog. His wife and kids
13 were obviously American. He didn't seem to have a steady job,
14 like at an American factory or anything like that.

15 And rumors started that he was an undercover
16 United States narcotics agent, somebody in the DEA or border
17 customs or somebody like that. And that rumor followed him
18 from the first house he lived in in Acuna to the second house
19 in Acuna, and the Marins began to hear about people asking
20 around about them, and they were asking questions. Their house
21 got searched when they weren't home, but nothing was taken.

22 One day, some men took Rafael at gunpoint to a
23 house that belonged to the Zeta criminal drug cartel, a Mexican
24 drug cartel. They accused him of being a DEA agent. He denied
25 it. They made him strip off his shirt to check him for a wire,

1 and they found on his back a United States Marines Corps
2 tattoo. And in their minds, that confirmed their suspicion and
3 rumors they had been hearing, that he was a U.S. federal drug
4 enforcement agent in Mexico undercover. And we do have federal
5 agents undercover in Mexico.

6 They gave him a choice: plata or plomo. Plata
7 means silver, plomo means lead. They said, you can prove
8 you're not a DEA agent. They knew his wife crossed the border
9 every day with the kids. They said, you're going to run a load
10 of drugs for us with your wife across the--across the border.
11 We're going to put some--going to put some dope in her car,
12 she's going to run it across the border, and that way, we'll
13 know you're not with the DEA.

14 Now, they didn't run the dope. The Marins knew
15 that-- First of all, it's against their religion. It's
16 against the law. But they knew if they ran one load, it
17 wouldn't be the last one and that there was no good way for
18 that to end. So they sort of just kept along with their life,
19 and the cartel people became impatient with them. They
20 accosted his wife when she was driving, banged on her door,
21 tried to get her to open the window. They threatened him when
22 he was out walking. On another occasion, they blocked in her
23 car, forcing her to flee the car and hide in the house and lock
24 herself in, and after she had locked herself in the house,
25 basically a gun battle erupted in the street outside. Still,

1 they didn't run that load.

2 Finally, the Zetas lost patience with the Marins
3 and they tried to kill him. They did a drive-by shooting. Men
4 in cars chase after him, firing guns at him, and he, by pure
5 luck, happened to be on a one-way street that was jammed up
6 with traffic. There was a place where he could run and not get
7 shot. And that was it. They said, we can't stay.

8 And you will hear from Oscar Barrientos, who is an
9 investigator who investigates down on the border, and he will
10 talk about--he's a former Border Patrol agent. He'll talk
11 about what's happening in Mexico, and he will explain to you
12 that what they're describing is not unusual, that this is
13 business as usual for the Zeta drug cartel and for the other
14 drug cartels in Mexico. And that once Mr. Marin had been
15 marked as a DEA agent, there was no cartel in Mexico that
16 wouldn't kill him, because, as a DEA agent, he was a common
17 threat to all the cartels. Every one of them would kill him.
18 There's no place in Mexico where they couldn't find him.

19 And Mr. Barrientos will talk about the control that
20 the drug cartels have in the Country of Mexico, how they're
21 connected with the police, the corruption, that DEA is a common
22 enemy. And they kill first. There's no trials, none of this.
23 Their killing him would have included not only Rafael, but his
24 family, his kids, and pretty much any friends he had down there
25 that they knew about, because that's the way they operate.

1 They don't just kill one person; they want to send a message.
2 And Mr. Barrientos will talk about the mass graves in Mexico.

3 Going to the police here sounds like a good idea.
4 There, it would have been suicide, because the police and the
5 cartels operate hand in glove. Seeking asylum in the U.S.
6 through legal means wasn't available for Mr. Marin. Because of
7 his aggravated felony, according to the law, he's completely
8 ineligible for asylum in the United States. In the end, there
9 was really no choice but to run or die, so they--so they ran.

10 The mistaken identity that I talked about in this
11 case is his identity, because they mistook him for a DEA agent,
12 and he's not. So he doesn't even have the protection that a
13 DEA agent would have to, you know, get extricated and join his
14 buddies or whatever.

15 Even in the United States, this fear of cartel
16 retaliation follows his family. They don't keep their house in
17 their name. They home-school their kids. They flee from
18 anyone who comes from the Del Rio or the Acuna area. And I
19 think the evidence is going to show that their fear is
20 reasonable, that the cartels can reach across the border and
21 they have reached across the border to kill people in this
22 country, including law enforcement officials, Border Patrol
23 agents.

24 The threat from this mistaken identity was and
25 remains present, imminent, and impending. It is real. It

1 involves death for both Rafael and for his family. He did
2 nothing recklessly to create this threat except for being
3 himself in Mexico. And fleeing Mexico, which is the crime he
4 committed, was the only way to avoid this threat, this peril to
5 his life and to his family.

6 These are the elements of duress, and I think that,
7 at the close of this case, the Judge will instruct you that if
8 you find that these things are true, or more likely true than
9 not true, that it's your duty under the law to find him not
10 guilty, and that's what I'm going to ask you to do. Thank you.

11 THE COURT: All right, Government. Call your first
12 witness.

13 MR. LONG: The United States calls Lonnie Felps.

14 THE COURT: Raise your right hand, please.

15 (THE OATH IS ADMINISTERED BY THE COURT)

16 THE COURT: Please be seated.

17 LONNIE FELPS,
18 GOVERNMENT'S WITNESS, TESTIFIED ON HIS OATH AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. LONG:

21 Q. Agent, could you please state your name?

22 A. Lonnie Felps.

23 Q. And could you spell that for the record, please?

24 A. L-o-n-n-i-e, F-e-l-p-s.

25 Q. Agent, how are you currently employed?

1 **A.** I am a deportation officer with Enforcement and Removal
2 Operations.

3 **Q.** Is that sometimes called ERO?

4 **A.** ERO.

5 **Q.** How long have you been with ERO?

6 **A.** I've been with ERO since 2012. Prior to that, I was
7 employed with the Border Patrol, from 2008 to 2012.

8 **Q.** From 2008 to 2012, you were with Border Patrol?

9 **A.** Yes.

10 **Q.** Where was your assignment?

11 **A.** El Paso.

12 **Q.** What is the immediate border town adjacent to El Paso in
13 Mexico?

14 **A.** Juarez.

15 **Q.** That's Juarez, Mexico, is the adjacent border town to
16 El Paso?

17 **A.** Yes.

18 **Q.** So do you have some amount of experience with the
19 interactions in U.S./Mexico border towns?

20 **A.** Yes.

21 **Q.** You said you did that until 2012; is that correct?

22 **A.** Yes.

23 **Q.** And then where did you go after that?

24 **A.** From there, I went to ERO in Eden, Texas, southeast of
25 San Angelo.

1 Q. All right. So for those who aren't necessarily familiar
2 with the federal jurisdiction, are we in the Northern District
3 of Texas?

4 A. Yes.

5 Q. Is San Angelo south of Lubbock approximately 200 miles?

6 A. Yes, it still is within this district.

7 Q. And is Eden southeast of San Angelo another forty
8 some-odd miles?

9 A. Yes.

10 Q. Are all of those locations still within the Northern
11 District of Texas?

12 A. Yes.

13 Q. How long have you been-- Well, let me first back up.

14 Are these agencies you're describing with Border
15 Patrol and then a removal officer with ERO--are those all
16 within the umbrella of the Department of Homeland Security?

17 A. Yes.

18 Q. And that may be the acronym most jurors are more familiar
19 with. Is that a large blanket immigration--excuse me, agency
20 responsible for the enforcement of immigration laws?

21 A. Yes.

22 Q. Did you have an opportunity to investigate an individual
23 by the name of Rafael Antonio Marin-Pina?

24 A. Yes.

25 Q. And I believe he's been referred to as Rafael Marin. Do

1 you see him in the courtroom here today?

2 **A.** Yes, I do.

3 **Q.** And could you point him out by an article of clothing
4 that he's wearing?

5 **A.** He's got a blue shirt on.

6 **Q.** And I see you looking at the defendant in the cause
7 before the Court.

8 MR. LONG: Would the record please reflect he has
9 identified the defendant?

10 THE COURT: Yes.

11 **Q.** (BY MR. LONG) When someone is potentially arrested on a
12 state accusation or booked into some type of holding facility
13 anywhere in the country, is there a system that notifies
14 immigration officers that there may be a potential alien being
15 housed somewhere in the United States?

16 **A.** Yes, there is.

17 **Q.** Can you describe that process to the jury, please?

18 **A.** When someone is booked into a county jail or a county
19 facility, "booked in" meaning via fingerprints, those
20 fingerprints are submitted to the national database, and that,
21 in turn, if they have any sort of immigration history, is
22 relayed to officials with DHS.

23 **Q.** And DHS meaning Department of Homeland Security?

24 **A.** Yes.

25 **Q.** So it's sort of an automated system. If someone is

1 booked into, let's say, the Tom Green County Jail--is that
2 where San Angelo is, is in Tom Green County?

3 **A.** Yes.

4 **Q.** If someone were booked into that jail, would they be
5 fingerprinted and then their fingerprint run through an
6 automated system that would potentially flag them for
7 immigration officials if they're potentially in the country
8 illegally?

9 **A.** Correct.

10 **Q.** Is that what happened in the case of Mr. Marin?

11 **A.** Yes.

12 **Q.** Do you recall on what date immigration officials became
13 aware that he was present in San Angelo?

14 **A.** I believe it was September 13th, 2015.

15 **Q.** And when do you--when did you actually become involved as
16 far as your part of the investigation of Mr. Marin-Pina?

17 **A.** October 16th, 2015.

18 **Q.** So how does--how did it work that--how was he--how was
19 he--how was it noticed that he was being held in Tom Green
20 County and then how did you become aware of it?

21 **A.** Whenever immigration officials in Department of Homeland
22 Security became aware of his presence in Tom Green County Jail,
23 they issued a detainer just simply stating, let us know when
24 this person is going to get out of jail. And that detainer was
25 lodged with the Tom Green County Jail. Tom Green County Jail

1 notified me the morning of October 16th saying that this person
2 is about to get out.

3 Q. So a detainer was placed on him by immigration officials
4 because of the automated system, and then you were directly
5 notified when he was about to be released by Tom Green County?

6 A. Yes.

7 Q. Once you were notified by Tom Green County, did you try
8 to check the defendant's immigration records based on the
9 identifiers you could get from Tom Green County?

10 A. Yes, I did. I ran his name, date of birth, his
11 identifying numbers through our systems to verify who he was.

12 Q. Were you able, with just those identifiers, to verify
13 that he was potentially in the country illegally?

14 A. Yes.

15 Q. Where did you actually encounter Mr. Marin-Pina for the
16 first time?

17 A. 122 West Harris in San Angelo, Texas, the Tom Green
18 County Jail.

19 Q. So you encountered him at the street address at the Tom
20 Green County Jail in San Angelo?

21 A. Yes.

22 Q. Did you take him into custody at that time?

23 A. Yes.

24 Q. What did you do after you took him into custody? Did you
25 take him to your office or another location?

1 **A.** I transported him to the Eden sub office in Eden, Texas.

2 **Q.** And is that for just furthering your investigation?

3 **A.** Yes, to begin processing.

4 **Q.** When you picked him up from the Tom Green County Jail,
5 was he in possession of any identifying documentation?

6 **A.** Yes.

7 **Q.** I'd like to turn your attention to Government's
8 Exhibit 2. There should be a notebook in front of you
9 actually, if you can turn to Tab Number 2 in Government's
10 Exhibit 2.

11 Does that appear to be an accurate copy of a voter
12 identification card that the defendant had in his possession
13 when you took him into custody in October of 2015?

14 **A.** Yes.

15 **Q.** And is that a fair and accurate copy of that
16 identification card?

17 **A.** Yes.

18 MR. LONG: Your Honor, at this time, the government
19 would move to admit Government's Exhibit Number 2.

20 MR. SLOAN: No objection.

21 THE COURT: Admitted.

22 MR. LONG: And we request permission to publish
23 that exhibit to the jury with the projector, Your Honor.

24 THE COURT: Yes.

25 **Q.** (BY MR. LONG) All right, Agent. This may be a little

1 bit difficult to see. Co-counsel is zooming in there for me.
2 Is this the same copy that you're looking at in Government's
3 Exhibit Number 2?

4 A. Yes.

5 Q. And does it have a name of an individual?

6 A. Yes.

7 Q. And what is that name?

8 A. Rafael Antonio Marin-Pina.

9 Q. And do you have the pointer? You may have a laser
10 pointer up there with you.

11 A. Oh, yeah.

12 Q. See if it's working. I'd ask-- And co-counsel, again,
13 has already zoomed in on it. Is that the name of the
14 individual that you-- Excuse me. Is that the name of the
15 individual that you picked up at the Tom Green County Jail?

16 A. Yes.

17 Q. All right. And zooming back out, does it also appear to
18 contain a photo--Government's Exhibit 2 contain a photo of the
19 defendant?

20 A. Yes.

21 Q. All right. What is this document? What is this card
22 that the jury is looking at?

23 A. It's a voter registration card for Mexico.

24 Q. And what is the authority that issues--or what would be
25 the authority that would issue such a card?

1 **A.** The Mexican federal government.

2 **Q.** Have you seen these cards on previous occasions?

3 **A.** Yes.

4 **Q.** And is it your understanding this is an identification
5 card issued by the Mexican government?

6 **A.** Yes.

7 **Q.** Once you arrived at the Eden processing station, did you,
8 yourself, actually fingerprint the defendant?

9 **A.** Yes.

10 **Q.** How do you go about doing that?

11 **A.** It's by utilizing a digital scanner. Each print is
12 enrolled into the national database and then uploaded to our
13 system.

14 **Q.** All right. So you actually print each of the defendant's
15 ten fingers?

16 **A.** Yes.

17 **Q.** And that's into a digital scanner?

18 **A.** Yes.

19 **Q.** And you said that gets uploaded to a national database;
20 is that correct?

21 **A.** Yes.

22 **Q.** If a match is found, does it give you certain results?

23 **A.** Yes.

24 **Q.** Was a match found of this defendant's fingerprints?

25 **A.** Yes.

1 Q. And who did those fingerprints return to?

2 A. Rafael Marin-Pina.

3 Q. Did you actually interview the defendant personally?

4 A. Yes.

5 Q. Before you interviewed him, did you inform him that he
6 had certain constitutional rights?

7 A. Yes.

8 Q. If I could turn your attention to Government's Exhibit
9 Number 1, I believe that's called a Form I-214. Are there lots
10 of forms in immigration proceedings?

11 A. Yes.

12 Q. And they're generally an "I," dash, number of some sort?

13 A. Yes.

14 Q. What is an I-214?

15 A. It's a warning as to constitutional rights and a waiver
16 of rights.

17 Q. Okay. And then on an I-214, after the waiver of rights
18 and the constitutional warnings, are there certain questions
19 that you're required to ask of someone who is potentially in
20 the country illegally?

21 A. Yes.

22 Q. Looking at Government's Exhibit 1, do you recognize that
23 document?

24 A. Yes.

25 Q. Is that a copy of an I-214 that you presented to Rafael

1 Marin-Pina in October of 2015?

2 A. Yes.

3 Q. Is that Government's Exhibit 1 an exact copy of that
4 document?

5 A. Yes.

6 Q. And is it in the same or substantially the same condition
7 as when you presented it to the defendant in October of 2015?

8 A. Yes.

9 MR. LONG: Your Honor, at this time, the government
10 would move to admit Government's Exhibit Number 1.

11 MR. SLOAN: No objection.

12 THE COURT: Admitted.

13 MR. LONG: And again request permission to publish,
14 Your Honor.

15 THE COURT: Yes.

16 Q. (BY MR. LONG) Looking at Government's Exhibit 1, is this
17 the I-214 you have been describing?

18 A. Yes.

19 Q. Okay. And at the top--at the very top of the form, do we
20 see those warning as to rights that you just mentioned?

21 A. Yes.

22 Q. And is there a section below that and-- Well, let's talk
23 about the warning as to rights for just a moment. Are these
24 what we would normally call Miranda warnings?

25 A. Yes.

1 Q. Certain constitutional rights anyone accused of a crime
2 can be informed of; is that right?

3 A. Yes.

4 Q. Now, are you able to give these in both English and
5 Spanish?

6 A. Yes.

7 Q. Did you give these in English or Spanish, or do you
8 recall?

9 A. I gave them in English.

10 Q. Do you recall why you gave them in English instead of
11 Spanish?

12 A. Because Mr. Marin-Pina speaks English fluently.

13 Q. Did he speak English well enough for you to be able to
14 read him the form and seem to understand what was happening?

15 A. Yes.

16 Q. Once you read those warnings, did he sign in the location
17 that waived those rights and he agreed to speak with you?

18 A. Yes.

19 Q. Okay. And again, zooming in, does that appear to be his
20 signature next to his name right under those rights?

21 A. Yes.

22 Q. And also appears to have your signature as well?

23 A. Yes.

24 Q. Did you ask the defendant where he was born?

25 A. I did.

1 Q. And what was his response?

2 A. Mexico City, Distrito Federal (phonetically), Mexico.

3 Q. Okay. And you spoke a couple of words in Spanish.

4 "Mexico City," I think most of us probably understand. I think
5 you said "Distrito Federal"? Is that correct?

6 A. Yes.

7 Q. What is Distrito Federal?

8 A. It's a state in Mexico.

9 Q. So is Mexico divided up into states, similar--similarly
10 to how the United States is divided up into states?

11 A. Yes.

12 Q. So Mexico City, is that the capital of Mexico?

13 A. Yes.

14 Q. And Distrito Federal, is that a state within Mexico
15 itself?

16 A. Yes.

17 Q. Did you ask the defendant of what country he was a
18 citizen?

19 A. I did.

20 Q. And what was his response?

21 A. Mexico.

22 Q. Did you ask the defendant if he had been previously
23 ordered deported, excluded, or removed from the United States?

24 A. Yes.

25 Q. And what was his response?

1 **A.** Well, to clarify, I asked him--based on what I saw in his
2 history, I asked him if he had been ordered removed on
3 January 27th of 1999, to which he replied "yes."

4 **Q.** Okay. So you're able to--having run his fingerprints,
5 are you--do you already have available to you some of the
6 information, and that would be in his alien file, or his
7 A-file?

8 **A.** Yes.

9 **Q.** And that would include a prior deportation order?

10 **A.** Yes.

11 **Q.** So you were already aware of exactly the date and
12 location he had been deported from when you asked this
13 question; is that accurate?

14 **A.** Yes.

15 **Q.** So you asked him specifically, had you been deported on
16 January the 27th, 1999, through Eloy, Arizona?

17 **A.** Yes.

18 **Q.** Or, excuse me, ordered removed--

19 **A.** Yes.

20 **Q.** --from the United States, excuse me, on that date; is
21 that correct?

22 **A.** Correct.

23 **Q.** When you asked him if he was the individual that had been
24 ordered removed on that date, what was his response?

25 **A.** I'm sorry. What's that?

1 Q. When you asked him if he had been previously ordered
2 removed on that date in that location, what was his response?

3 A. "Yes."

4 Q. So he confirmed with you that he had been previously
5 ordered removed from the country?

6 A. Yes.

7 Q. Did you also ask the defendant when, where, and how he
8 had illegally re-entered the United States on this particular
9 occasion?

10 A. I did.

11 Q. And can you read the defendant's response from
12 Government's Exhibit 1?

13 A. He stated he did not remember. He was smuggled across in
14 a car and didn't see where he crossed.

15 Q. So he couldn't give you an exact location or date?

16 A. Correct.

17 Q. But the manner is, he had been smuggled in a car somehow?

18 A. Yes.

19 Q. Did you also ask the defendant if he had previously
20 applied to the Attorney General for permission to lawfully
21 re-enter the United States?

22 A. Yes.

23 Q. And what was his response when you asked him if he had
24 applied for lawful readmission?

25 A. "No."

1 Q. He had not re-applied?

2 A. That he had not re-applied.

3 Q. I'd like to discuss the defendant's alien file for just a
4 moment. Can you tell the jury what an alien file, or A-file,
5 is?

6 A. An A-file lists all incidents that a subject has with
7 immigration officers or any local, state, or federal law
8 enforcement.

9 Q. So anytime someone who is in the country illegally
10 interacts with law enforcement, that encounter should be in
11 their alien file. Is that a fair statement?

12 A. Yes.

13 Q. Are there occasions where someone who is in the country
14 illegally interacts with a state authority or city authority,
15 someone who is not a federal authority--are there occasions
16 where they can interact with state authorities and then that
17 interaction not be in their alien file?

18 A. There are.

19 Q. So if someone is interacting with state, city, or county,
20 nonfederal authority, and they're interacting with someone
21 who's in the country illegally, if they don't know to notify
22 yourself, like what happened with Tom Green County Jail, they
23 don't know to notify you or immigration officials, is there a
24 chance that their interaction would not be noted in their alien
25 file?

1 A. There is.

2 Q. But if someone has interacted with immigration officials
3 or been in immigration proceedings, should that documentation
4 be contained in their alien file?

5 A. Yes.

6 Q. Do the documents in the alien file set out activities
7 that are conducted by the officials of the Department of
8 Homeland Security?

9 A. Yes.

10 Q. Do the documents that are in the alien file record
11 matters that are conducted by those officials of the Department
12 of Homeland Security while they are under a legal duty to
13 report those things?

14 A. Yes.

15 Q. Just meaning, if you handle someone, for instance, with
16 the I-213 that we looked at--or, excuse me, this I-214 that
17 we're looking at, would that be something that you would be
18 required to record and place in an alien file?

19 A. Yes.

20 Q. As part of your job?

21 A. Yes.

22 Q. Are the documents that are in the alien file the official
23 custody of the Department of Homeland Security?

24 A. Yes.

25 Q. And would that be considered restricted access to those

1 documents?

2 A. Yes.

3 Q. I'd like to turn your attention to Government's
4 Exhibits 3, 4, and 6, if you can look at those, please.

5 And before testifying today, have you reviewed
6 those exhibits?

7 A. Yes.

8 Q. Are these exhibits documents that were taken from the
9 defendant's A-file?

10 A. Yes.

11 Q. And would these all fall within the category of things
12 that were under a duty to record in the possession of the
13 Department of Homeland Security with restricted access?

14 A. Yes.

15 MR. LONG: Your Honor, at this time, the government
16 would move to admit Government's Exhibits 3, 4, and 6.

17 MR. SLOAN: No objection.

18 THE COURT: Admitted.

19 MR. LONG: And permission to publish, Your Honor,
20 to the jury.

21 THE COURT: Yes.

22 Q. (BY MR. LONG) Turning to Government's Exhibit 6, Agent,
23 can you tell the jury what we're looking at in Government's
24 Exhibit 6?

25 A. This is a Mexican birth certificate.

1 Q. All right. And the entire document is in Spanish; is
2 that correct?

3 A. Yes.

4 Q. And I'm going to get this incorrect, but what does "acta
5 de nacimiento" mean?

6 A. Birth certificate.

7 Q. And can we see, who does this birth certificate pertain
8 to the birth of?

9 A. Rafael Antonio Marin-Pina.

10 Q. And does this name match the name of the individual that
11 you were interviewing in October of 2015?

12 A. Yes.

13 Q. And does it also-- We can see there, "In Mexico"--the
14 first line of the box there, it says "In Mexico." What's the
15 next two words?

16 A. Distrito Federal.

17 Q. And does that confirm for you where the defendant said he
18 was born?

19 A. Yes.

20 Q. And does it also contain a date of birth on there?

21 A. Yes.

22 Q. And we don't have to look at it, but did you also, at
23 some point, ask the defendant who his parents were?

24 A. Yes.

25 Q. So we didn't look at it on the I-214 that we just saw

1 where you were asking the defendant questions, but when you
2 asked the defendant those questions on the I-214, did his
3 answers match who it says that his parents are on this birth
4 certificate?

5 A. Yes.

6 Q. Turning to Government's Exhibit 3, can you tell the jury
7 what Government's Exhibit 3 is? It's a little bit washed out.

8 A. Uh-huh. It's an order of an immigration judge in removal
9 proceedings.

10 Q. All right. So does this type of document encapsulate
11 what would happen in a removal proceeding?

12 A. Yes.

13 Q. Who is the subject of the proceeding? We can see at the
14 top left-hand corner here. Who is the subject of the
15 proceeding in Government's Exhibit 3?

16 A. Rafael Antonio Marin-Pina.

17 Q. And next to the word "Case Number," over to the right in
18 the heading, we see Case Number, semi-colon, "A," then a series
19 of numbers. What are we looking at there?

20 A. That's his alien registration number.

21 Q. So alien registration number, is that a unique identifier
22 that is assigned to an illegal alien to document their
23 interactions with immigration authorities?

24 A. It's assigned to both legal and illegal aliens just to
25 document encounters with Immigration.

1 Q. Is this A-file number--did it match the A-file number
2 that came back whenever you scanned the defendant's
3 fingerprints in this case?

4 A. Yes.

5 Q. And would this A-file--and I'll read it for the
6 record--A92-578-173--was this A-file consistent throughout the
7 alien file of Mr. Marin-Pina?

8 A. Yes.

9 Q. All right. If I could get my co-counsel to back up, I'm
10 going to ask you to read a certain portion, and if you could
11 read starting from the paragraph that's below the heading of
12 Order of the Immigration Judge through that first line where
13 the box is checked. Can you read that for the jury?

14 A. "Order of the Immigration Judge. This is a summary of
15 the oral decision entered on January 27, 1999. This memorandum
16 is solely for the convenience of the parties. If the
17 proceedings should be appealed or reopened, the oral decision
18 will become the official opinion in the case." And then the
19 box is checked next to, "The respondent was ordered removed
20 from the United States to MX," meaning Mexico.

21 Q. Okay. Is MX a short version of Mexico?

22 A. Yes.

23 Q. And down at the very bottom, is this order signed by
24 Immigration Judge?

25 A. Yes.

1 Q. And we read at the top it was dated January 27th, 1999.
2 Is that also down at the bottom?

3 A. Yes, it is.

4 Q. And did the defendant--would this have been the document
5 you were looking at, or similar records, when you asked the
6 defendant directly, were you ordered removed on January 27th,
7 1999?

8 A. Yes.

9 Q. And he agreed with you that he had been; is that correct?

10 A. Yes.

11 Q. All right. Turn to Government's Exhibit 4. What is this
12 document?

13 A. This is an I-205, warrant of removal.

14 Q. And what type of action does this document record?

15 A. It's verification of removal or deportation from the U.S.

16 Q. So once someone is actually ordered removed from the
17 U.S., does the action of physically removing them from the
18 country still have to happen?

19 A. Yes.

20 Q. And is that what an I-205 captures?

21 A. Yes.

22 Q. I'd like to ask you if you can read that top portion
23 where it starts, "Rafael Antonio Marin-Pina," and then read
24 through the section that we see highlighted for the jury.

25 A. Okay. "Rafael Antonio Marin-Pina, who entered the

1 United States at San Ysidro, California, on December 1st, 2007,
2 is subject to removal/deportation from the United States based
3 upon a final order by an immigration judge in exclusion,
4 deportation, or removal proceedings."

5 Q. So this is ordering the immigration officer who is
6 executing this form to remove that defendant who had entered
7 the United States at San Ysidro, California, on December
8 the 1st, 2007, because he's subject to removal from the
9 United States based on a final order by an immigration judge?

10 A. Correct.

11 Q. I essentially just reread what you read. But is this the
12 actual document that would be used to physically remove the
13 person from the country?

14 A. Yes.

15 Q. If we can turn to the second page of Government's
16 Exhibit 4. Is this the back of that same form?

17 A. Yes.

18 Q. What information do we see listed on the first two lines
19 of the form?

20 A. The name of the subject and the port, date, and manner of
21 removal.

22 Q. Okay. You say port, date, and manner of removal. What
23 was the port that the defendant, Rafael Marin-Pina, was removed
24 through?

25 A. San Ysidro.

1 Q. Okay. And it's kind of washed out. Is this normally
2 done with a stamp?

3 A. Yes.

4 Q. And the stamp says "Deported," and it's hard to read, but
5 it says "SYS"; is that correct?

6 A. Correct.

7 Q. And is that an abbreviation for San Ysidro?

8 A. Yes.

9 Q. Where is that located?

10 A. San Ysidro is in California.

11 Q. And again, it's a little washed out, but what is the date
12 that the defendant was removed?

13 A. August 7th, 2008.

14 Q. And we see that below that, it says "afoot." What does
15 that mean?

16 A. It means he walked across the port-of-entry bridge.

17 Q. So the individual immigration officer who is executing
18 this form, is he actually--what does he do when he's executing
19 this form?

20 A. He would drive the individuals up to the port-of-entry
21 bridge and then direct them to walk back across the
22 port-of-entry bridge afoot, as opposed to driving them across.

23 Q. So the immigration officer would stop at the U.S. side of
24 the border and order them to walk, afoot, across the bridge, or
25 wherever the location was?

1 A. Yes.

2 Q. And is that what this document states, that that was done
3 to Mr. Marin-Pina on August 7th, 2008?

4 A. Correct.

5 Q. All right. If we zoom back out just a little bit, we see
6 below that particular section appears to be a photograph and
7 then a fingerprint; is that correct?

8 A. Yes.

9 Q. Who does that photograph appear to be of?

10 A. Mr. Marin-Pina.

11 Q. And I want to talk just a moment about the fingerprint
12 that's on this form. When would this fingerprint that's rolled
13 on this form have been taken?

14 A. It would have been taken the day he was removed.

15 Q. So are you the one who actually took that fingerprint?

16 A. No.

17 Q. I asked you earlier if these documents appear to be in
18 substantially the same condition as they were when you took
19 them from his alien file. Does there appear to be some
20 additional writing just next to the fingerprint on this form?

21 A. Yes.

22 Q. Are you the one that placed that writing there?

23 A. No.

24 Q. And it also appears to be dated. Did you place that date
25 there?

1 **A.** No.

2 **Q.** So you didn't take the fingerprints that we see on this
3 particular exhibit; is that correct?

4 **A.** Correct.

5 **Q.** Did there come a time when you did, yourself, actually
6 take the defendant's fingerprints?

7 **A.** Yes.

8 **Q.** And we've described that earlier. When you were
9 processing him, you had him digitally scan his fingerprints; is
10 that right?

11 **A.** Yes.

12 **Q.** I'd like you to turn to Government's Exhibit Number 5.
13 Can you briefly describe for the jury what Government's
14 Exhibit 5 is?

15 **A.** This is an I-213. Records an incident with a suspected
16 illegal alien.

17 **Q.** Okay. So you said it's an I-213 that records an incident
18 with a suspected illegal alien?

19 **A.** Correct.

20 **Q.** Is that something, again, you would be required to fill
21 out anytime you interacted with a potential illegal alien?

22 **A.** Yes.

23 **Q.** And does the I-213 normally contain some background data,
24 biological information about the defendant?

25 **A.** Yes.

1 Q. Now, looking at Government's Exhibit 5, has that been
2 redacted for court purposes in this particular proceeding?

3 A. Yes.

4 Q. Other than those redactions, does this form appear to be
5 in the same or substantially the same condition as it did when
6 you executed it back in October of 2015?

7 A. It also has the red writing next to the fingerprint.

8 Q. Okay. So it also has the red writing next to the
9 fingerprint; is that correct?

10 A. Yes.

11 Q. Other than that red writing next to the fingerprint, are
12 there any other alterations or changes?

13 A. No.

14 MR. LONG: Your Honor, at this time, the government
15 would move to admit Exhibit Number 5.

16 MR. SLOAN: No objection.

17 THE COURT: Admitted.

18 MR. LONG: And permission to publish, Your Honor?

19 THE COURT: Yes.

20 Q. (BY MR. LONG) Looking at Government's Exhibit Number 5,
21 again, we see some information that's been redacted; is that
22 correct?

23 A. Yes.

24 Q. And is that, again, just more kind of biological
25 background information?

1 A. Correct.

2 Q. Do we see a photograph of an individual on this
3 particular page?

4 A. Yes.

5 Q. Who took that photograph?

6 A. I did.

7 Q. And did you cause it to be inserted into this document?

8 A. Yes.

9 Q. Who does that photograph depict?

10 A. Rafael Marin-Pina.

11 Q. And that's the individual that you interacted with and
12 interviewed that we have been discussing today; is that right?

13 A. Correct.

14 Q. I'd like to turn your attention to the items that are
15 next to the photograph. Do there appear to be a couple of
16 fingerprints next to the photograph?

17 A. Yes.

18 Q. Did you, yourself, take those fingerprints?

19 A. Yes.

20 Q. Do you know those to be the fingerprints of the defendant
21 sitting in the courtroom here today?

22 A. I do.

23 Q. Did you examine the defendant's entire alien file before
24 testifying here today?

25 A. Yes.

1 Q. After examining his entire alien file, did you find any
2 consent from the Secretary of Department of Homeland Security
3 or the Attorney General of the United States for the defendant
4 to apply for readmission to the United States since the time of
5 his previous deportation on August the 7th of 2008?

6 A. No, I did not.

7 Q. If the defendant had obtained that consent, would that
8 have been contained in his alien file?

9 A. Yes.

10 Q. Are you familiar with what we call the Computer-Linked
11 Application Information Management System?

12 A. Yes.

13 Q. I think it goes by the acronym CLAIMS.

14 A. Correct.

15 Q. What information is stored in the CLAIMS database?

16 A. CLAIMS tracks all applications for immigration benefit
17 and any changes to the status of those applications.

18 Q. So if someone wanted to apply for naturalization and
19 become a citizen, is that something that would be tracked in
20 the CLAIMS system?

21 A. Correct.

22 Q. If they have filed an application, if they have been
23 given some type of permanent residency status, or even full
24 citizenship, is that something that would be in the CLAIMS
25 database?

1 **A.** Yes.

2 **Q.** If they had something in their background that would
3 potentially make them eligible for citizenship and they filed
4 such the appropriate application, would that be--would that be
5 found in the CLAIMS database?

6 **A.** Yes.

7 **Q.** Did you review the CLAIMS database for the records that
8 related to the defendant Rafael Marin-Pina prior to testifying
9 here today?

10 **A.** I did.

11 **Q.** And a similar question. After examining that database,
12 did you find any consent from the Secretary of the Department
13 of Homeland Security or the Attorney General of the
14 United States for the defendant to apply for readmission to the
15 United States since he had been previously ordered removed and
16 deported on August the 7th of 2008?

17 **A.** No.

18 **Q.** If the defendant had obtained such consent, would that
19 have been found in the CLAIMS database?

20 **A.** Yes.

21 MR. LONG: Pass the witness, Your Honor.

22 MR. SLOAN: May it please the Court.

23 CROSS-EXAMINATION

24 BY MR. SLOAN:

25 **Q.** Mr. Felps, who is Enrique Camarena; do you know?

1 A. I do not.

2 Q. Kiki Camarena? Does that ring a bell?

3 A. Yes.

4 Q. Who was he?

5 A. He was a DEA agent.

6 Q. What happened to him?

7 A. He was tortured and killed.

8 Q. Where?

9 A. I honestly don't remember. I think it was Colombia, or--

10 Q. Did that--is that a story that gets passed around the
11 Border Patrol where you were at?

12 A. It's passed around most federal agencies, I believe.

13 Q. Okay. The voter registration card that's Government's
14 Exhibit Number 2, do you have that in front of you?

15 A. Yes, sir.

16 Q. Okay. What you have is a copy. What happened to the
17 original of that document?

18 A. It's still in his--his A-file.

19 Q. Okay. The original is in his A-file or a copy of the
20 original?

21 A. As far as I know, the original is still in his A-file.

22 Q. Okay. I want to draw your attention to Government
23 Exhibit Number 1, and I want to ask you some questions related
24 to that exhibit. What's a credible fear interview?

25 A. It's performed by an asylum officer to determine if

1 someone has credible fear of their--of returning to their
2 country of origin.

3 Q. Okay. So it's a screening process for an asylum
4 determination. Right?

5 A. Correct.

6 Q. And when persons are apprehended for immigration
7 violations, they are asked a series of questions, and that's
8 what's in Government Exhibit Number 1. Right?

9 A. Correct.

10 Q. That's a standard intake form?

11 A. Yes.

12 Q. All right. And in that I-214 form, there's a question
13 that asks, "Do you have any fear or concern about being
14 returned to your home country or being removed from the
15 United States?" Correct?

16 A. Yes.

17 Q. All right. And if we could zoom in on that. Thank you.

18 What was Mr. Marin's answer to that question?

19 A. "Yes."

20 Q. He answered "yes," that he did have a credible fear?

21 A. Correct.

22 Q. If a person answers "yes" to that question, were any
23 follow-up questions asked?

24 A. No, I'm not an asylum officer, so whenever he comes back
25 to Department of Homeland Security custody, he would be

1 referred to an asylum officer.

2 Q. So he could be referred to an asylum officer?

3 A. No, he will be since he claimed fear.

4 Q. Okay. Is there a--are you familiar with Title 8, Aliens
5 and Nationality, and Chapter 12?

6 A. No.

7 Q. Are you familiar with the legal requirements of an asylum
8 application?

9 A. No.

10 Q. All right. Do you know whether a person who has an
11 aggravated felony can get asylum?

12 A. I honestly don't know.

13 Q. You don't know the answer to that question?

14 A. No.

15 Q. Okay. Do you keep in contact with the members of the
16 Border Patrol that you used to work with?

17 A. Yes, sir.

18 Q. All right. And the Border Patrol has lost agents to the
19 drug cartels in Mexico, haven't they?

20 A. Correct.

21 Q. That's happened on both sides of the border, hasn't it?

22 A. Yes.

23 Q. And some of those men were murdered by people who
24 appeared to be members of the Mexican military; isn't that
25 right?

1 A. Yes.

2 Q. And some of them appeared to have been murdered by cartel
3 members?

4 A. Yes, I mean, I--

5 Q. If you don't know, just--that's fine.

6 A. Yeah, I mean, they were killed violently, but I don't
7 really know who they were working for.

8 Q. Okay.

9 MR. SLOAN: No further questions.

10 REDIRECT EXAMINATION

11 BY MR. LONG:

12 Q. Agent, when someone makes a claim of fear, as
13 Mr. Marin-Pina has in this case when you interviewed him,
14 what's the process after that?

15 A. When he comes back to Department of Homeland Security
16 custody, he will be referred to an asylum officer.

17 Q. And will that asylum officer make more inquiry into
18 whether that's a credible fear or not?

19 A. Correct. They would do a more in-depth interview of his
20 claim.

21 Q. So are you responsible for deciding whether someone would
22 be granted asylum or not?

23 A. No.

24 Q. And would that be part of a separate proceeding than a
25 criminal proceeding for someone violating the law, a federal

1 statute?

2 A. Yes, it would be separate.

3 Q. As far as you are aware, is Mr. Marin-Pina, whatever his
4 criminal history may be, going to be given an asylum interview?

5 A. As far as I know, he will be.

6 Q. When you worked as a Border Patrol agent, did you ever
7 have to work on the border, at border checkpoints and things of
8 that nature?

9 A. I worked on the border and at checkpoints.

10 Q. When you worked on the border or at checkpoints, did you
11 ever have individuals that made claims of needing asylum or
12 having fear of being returned to Mexico?

13 A. Yes.

14 Q. At that point, did you just say, "No, I don't care,
15 you're going back to Mexico"?

16 A. No.

17 Q. What is your job, what is your duty, what does policy
18 require of you, even at a border checkpoint, where it's Mexico
19 and the United States behind you, what does your policy require
20 if someone comes to you and makes a claim of fear or need of
21 asylum?

22 A. To refer them to an asylum officer.

23 Q. And whether they stroll up to you with bags packed or
24 come running with people chasing them, if they claim fear and
25 need of asylum, are they going to be given some type of hearing

1 or interview for that to be determined?

2 A. Yes.

3 Q. And that's just procedure?

4 A. Yes.

5 Q. So at no point would an individual, if policy were
6 followed, be refused at the border if they were claiming
7 asylum. Is that a fair statement?

8 A. I'm sorry. What was that?

9 Q. By policy, would an individual who comes to a border
10 station checkpoint, border crossing, if they were claiming a
11 need for asylum, by policy, they should never be immediately
12 refused and sent back to Mexico; is that correct?

13 A. Correct. No.

14 MR. LONG: No further questions.

15 THE COURT: All right. You may step down.

16 Call your next witness.

17 MR. HAAG: Your Honor, the United States calls
18 Detective Garland Timms.

19 THE COURT: If you'll raise your right hand,
20 please.

21 (THE OATH IS ADMINISTERED BY THE COURT)

22 THE COURT: Please be seated.

23

24

25

1 GARLAND TIMMS,
2 GOVERNMENT'S WITNESS, TESTIFIED ON HIS OATH AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MR. HAAG:

5 Q. Garland, would you please state your name for the jury.

6 A. My name is Garland Timms.

7 Q. Garland, how are you currently employed?

8 A. I'm employed with the City of Lubbock Police Department
9 as a commissioned police officer.

10 Q. How long have you served with the Lubbock Police
11 Department?

12 A. May will be 31 years.

13 Q. Are you assigned to a particular division within the
14 Lubbock Police Department?

15 A. Yes, I am. I'm assigned to the Identification Section.

16 Q. As part of your duties in the Identification Section, do
17 you conduct fingerprint examinations?

18 A. Yes, I do.

19 Q. Let's talk a little bit about your vast experience with
20 fingerprint comparisons. Do you have any specialized training
21 or experience in fingerprint comparisons?

22 A. Yes, sir. I've been through the basic identification
23 class, the intermediate identification, advanced
24 identification. I've also had advanced ridgeology comparison
25 and advanced--the investifying of palm prints and comparisons.

1 Q. In addition to your formalized training, do you receive
2 on-the-job training daily in your duties as an Identification
3 Section officer?

4 A. Yes, sir. I look at latent fingerprints just almost
5 daily.

6 Q. And, Garland, if you could speak up just a little bit.

7 A. Okay.

8 Q. Thank you, sir.

9 How long have you been conducting fingerprint
10 examinations?

11 A. Since 1996.

12 Q. During the course of your career, could you estimate for
13 the jury, how many fingerprint comparisons have you made?

14 A. I do actual fingerprint comparisons and examinations
15 every morning. So since 1996, I've done over probably
16 10,000 actual examinations and comparisons of looking at
17 fingerprints.

18 Q. Have you ever testified in state court as an expert in
19 fingerprint comparison?

20 A. Yes, I have.

21 Q. About how many times?

22 A. About 50 times, I would say, yes.

23 Q. Have you ever testified here in federal court as an
24 expert in fingerprint examination?

25 A. Yes, sir.

1 Q. And approximately how many times?

2 A. Ten, fifteen times.

3 Q. Let's talk a little bit about fingerprint examination and
4 explain that a little bit to the jury. What is an inked
5 fingerprint?

6 A. Inked fingerprints are usually a known print that you
7 obtain from an individual. And you also have what's known as
8 latent fingerprints, which is normally fingerprints that are
9 found at crime scenes that are the unknown.

10 Q. So if it's an inked fingerprint, is it a fingerprint that
11 you take the person and physically roll their print onto a card
12 so you can say to a certainty, I know that's that person's
13 fingerprint?

14 A. Yes, it is.

15 Q. Are fingerprints specific as to each individual?

16 A. There have never been two persons to have the same
17 fingerprints. We're all born with a ridge characteristic or
18 ridge formation of fingerprints on the bulbs of our fingers, on
19 the palms of our hands, and on the soles of our feet. And
20 every person's prints are different.

21 Q. In the history of fingerprinting through all of your
22 reviews of periodicals, books, texts, databases, has there ever
23 been an occasion where two people have had the exact same
24 fingerprint?

25 A. No, there has not.

1 Q. Let's go ahead and go to the demonstrative exhibit and
2 just talk a little bit about how you compare fingerprints. If
3 you'll turn to the next slide, please.

4 And if you would, just review this slide for the
5 jury and the information contained on this slide.

6 A. Okay. Like we've said, every person--

7 Q. And I'm sorry, Garland. There's a laser pointer on
8 there. There should be a red dot in the center, and that will
9 activate the laser.

10 A. Like I said, every person's fingerprints are different.
11 We are born with that fingerprint pattern on the bulbs of our
12 fingers, the palms of our hands, and soles of our feet, and we
13 carry that same fingerprint pattern ridge flow from the day we
14 are born, we continue with that same fingerprint flow until the
15 day we die. Fingerprints never change. Like I said, it's on
16 the bulbs of our fingers, the palms of our hands, the soles of
17 our feet.

18 We do the fingerprint comparisons to determine
19 identity, nonidentity, and we also have inconclusive patterns,
20 which normally our inconclusive is when the quality of our
21 fingerprints is usually not very well done. We find a lot of
22 inconclusive comparisons in latent fingerprint comparisons.

23 Q. So if there's not a sufficient detailed fingerprint that
24 you can make a comparison, you just determine it to be
25 inconclusive?

1 **A.** Inconclusive, yes.

2 **Q.** Go to the next slide, please.

3 And let's talk about--in doing a comparison of a
4 person's fingerprints, are there different levels of
5 comparison?

6 **A.** Normally have about two different levels or steps that we
7 do to determine if the fingerprints are the same or not the
8 same. The first level we would look at, we do--we normally
9 just begin looking at the classification or the pattern type of
10 the fingerprints.

11 **Q.** And let's go ahead and go to the next slide and talk
12 about that.

13 **A.** We basically have three different pattern types of
14 fingerprints. We have arches, loops, and whorls. And within
15 the arch pattern, we have two different types of arches. We
16 have a tented arch and a plain arch.

17 Within the loop pattern, we have two different
18 types of loops. We have a right-slope loop and a left-slope
19 loop.

20 And within the whorl pattern, we have four
21 different types of patterns. We have a plain whorl, we have a
22 central pocket loop whorl, an accidental whorl, and a double
23 loop whorl.

24 So in our first classification, what we're doing is
25 we're going to look to see, is our fingerprint in this person,

1 in our known and our unknown, is it the same fingerprint
2 pattern.

3 Q. And let's go ahead and look at some of those patterns in
4 the next slide.

5 A. And this is our patterns here. Like I said, we have the
6 right- and left-slope loops, the plain and the tented arch, and
7 then the four pattern--whorl patterns: the plain, the central
8 pocket loop, the double loop, and the accidental whorl.

9 Q. And if you would, just to show the jury--probably like me
10 and have probably difficulty seeing some of the things that, as
11 a 20-year veteran, you can see. Would you explain, like in
12 that first upper left slide where it says right-slope loop,
13 would you point for the jury where the fingerprint does the
14 right-slope loop?

15 A. What we basically have is, the flow of the fingerprint
16 comes in one side of the fingerprint pattern, it goes up, and
17 it comes back out the same side, and which every side it goes
18 in or out of will we determine if it's a right-slope or a
19 left-slope loop.

20 Q. Okay. And let's go ahead and go on to the next slide and
21 talk about the next level of friction ridge detail where you
22 start to do the real analysis.

23 A. In the Level 2 or the second level of the fingerprint
24 comparison, this is where we actually determine, yes or no, if
25 it is the same person or not. What we begin looking for is, we

1 begin to look for individual class characteristics inside the
2 fingerprint. There's five individual class characteristics.
3 We have an ending ridge; a bifurcation; we have dots;
4 enclosures, or also known as ridge islands; and then we have
5 short ridges.

6 And what we will look for in this is, we will look
7 for this individual class characteristics, the ending ridges,
8 bifurcations, and dots. But we will also look at the
9 relationship where this one bifurcation is in the known print
10 to the unknown, and they have to be in the same exact position
11 within the--both of the same fingerprints.

12 **Q.** Okay. And let's go to the next slide so we can look at
13 exactly how this is done.

14 **A.** And what we do is, we will look inside the fingerprint
15 pattern itself for this. This would be your bifurcation where
16 you have a ridge that begins, and then it forks off into two or
17 more ridges. Then we have just this short ridge,
18 self-explanatory; the ending ridge, also self-explanatory; the
19 dot, pretty much self-explanatory. It's just a dot in the
20 fingerprint where the ridge is usually just slightly longer
21 than it is the width of that ridge. And then we have the
22 enclosure or ridge island, where we have a single ridge that
23 forks, bifurcates off and then comes back to a single ridge.

24 Them are the five characteristics that we're
25 looking for in the unknown and the known to determine if it is

1 the same person or not.

2 Q. If we'll go to the next slide, please. And go to the
3 next slide.

4 A. So basically, like I said, we're going to do the two
5 levels. First thing we're going to do is look at the pattern
6 type to determine, in our known, if we have a right-slope loop,
7 left-slope loop, and in our unknown. If our pattern type is
8 the same, then we will continue to our Level 2, to our step--
9 next step. This is where we will begin to look for the points
10 of identification within the two fingerprints itself.

11 Q. Go to the next slide, please. And go ahead and--one more
12 time.

13 A. So what we will do is, we will find these types of
14 patterns or these types of individual characteristics. We have
15 a dot here, an ending ridge here. We will find these two
16 points in our known print. We will look for these two exact
17 points in our unknown print, and they have to be in the same
18 relationship in both--in both fingerprints. Once we find these
19 two, then we will continue up one ridge to a next point. If
20 that continues in that point, we will continue this process
21 until we determine, by the amount of points, that, yes, this
22 print is the same as this print.

23 Q. Let's turn to your fingerprint comparison in this case.
24 I want to turn your attention to the book in front of you,
25 Government's Exhibits 4 and 5, and that's going to be the

1 I-205, Warrant of Removal/Deportation for the defendant, and
2 the I-213, Record of Inadmissible Alien.

3 We've heard testimony earlier about some red
4 writing on those documents. Do you know who made those red
5 writing--or made the red writing marks on the documents?

6 A. Yes, sir, I do.

7 Q. And how do you know that that's your handwriting?

8 A. It's mine. It has my case number that I assigned in this
9 case. It's my name, my initials, and my badge number.

10 Q. Did you conduct a fingerprint examination of the
11 defendant's fingerprints when taken when he was removed from
12 the United States and the fingerprints taken by Agent Felps?

13 A. Yes, I did.

14 Q. What was the result of your examination?

15 A. They were of the same person. They are the same person.

16 Q. Did you ask anyone in your office to verify your
17 conclusion?

18 A. Yes, I did.

19 Q. Who did you ask?

20 A. Detective John Barber.

21 Q. And did he verify your conclusion that the same person's
22 fingerprints were in Government's Exhibits 4 and 5?

23 A. Yes, he did.

24 MR. HAAG: I pass the witness, Your Honor.

25 MR. SLOAN: No questions.

1 THE COURT: All right. You may step down.

2 Call your next witness.

3 MR. HAAG: Your Honor, may this witness be excused?

4 THE COURT: Yes.

5 MR. HAAG: Thank you, Your Honor.

6 MR. LONG: The United States rests, Your Honor.

7 THE COURT: Mr. Sloan?

8 MR. SLOAN: Yes, Your Honor. We would call Bibiana
9 Cortez-Marin. And my paralegal is going to have to go get her.

10 (PAUSE)

11 THE COURT: If you'll raise your right hand.

12 (THE OATH IS ADMINISTERED BY THE COURT)

13 THE COURT: Please be seated.

14 BIBIANA CORTEZ-MARIN,

15 DEFENSE WITNESS, TESTIFIED ON HER OATH AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. SLOAN:

18 Q. Could you state your name for the jury?

19 A. Yes, Bibiana Cortez-Marin.

20 Q. And how old are you, Bibiana?

21 A. I'm thirty-three years old.

22 Q. And how do you know the defendant, Rafael?

23 A. He's my husband.

24 Q. When did you meet him?

25 A. In the year 2000.

1 Q. Okay. And did you guys get married?

2 A. Yes.

3 Q. Do you have any kids together?

4 A. Four kids.

5 Q. How old are they?

6 A. Thirteen, twelve, ten, and eight.

7 Q. Did there come a time when Rafael and you guys moved to

8 Mexico?

9 A. Yes, several times.

10 Q. Okay. And where all have you lived in Mexico?

11 A. We lived in Central Mexico where I was born, Michoacan,

12 and in Yucatan, and we lived in Acuna for a while.

13 Q. Okay. Now, you were born in Central Mexico, but you're

14 a--are you a U.S. citizen?

15 A. Yes, naturalized.

16 Q. You're a naturalized U.S. citizen. Were your children

17 born in the U.S.?

18 A. Yes.

19 Q. All right. So they're all U.S. citizens. Right?

20 A. Yes.

21 Q. Okay. Did there come a time when you started living in

22 Acuna?

23 A. Yes.

24 Q. All right. Where is Acuna?

25 A. It's the border to Del Rio here in Texas.

1 Q. Okay. So it's across the Texas border--

2 A. Yes.

3 Q. --from the City of Del Rio?

4 A. Yes.

5 Q. Where were your kids going to school?

6 A. They were going to school in Del Rio.

7 Q. Why did you choose Acuna?

8 A. It seemed like a good option to--so the kids could go to
9 school in the United States, and maybe I could work in the
10 United States.

11 Q. Were you working in the United States while the--

12 A. Yes, part-time.

13 Q. Okay. Did your money go a little further if you earned
14 it in the United States then spent it in Mexico?

15 A. Definitely, yes.

16 Q. All right. Where did you live in Acuna, the first place
17 you lived?

18 A. The first place was, I guess, government houses that they
19 sell to people. They're called Los Altoses (phonetically).

20 Q. Okay. It's a government house called a what?

21 A. It's Los Altos (phonetically), The Heights--

22 Q. Okay.

23 A. --in English. It's just who we were renting from, from
24 an individual there.

25 Q. Okay. Was that like an apartment or an individual house

1 or what?

2 A. It's individual houses.

3 Q. Okay. Do you own a dog?

4 A. Yes.

5 Q. What kind of dog?

6 A. He's a German Shepherd.

7 Q. When you were living at the Los Altos, did you interact
8 with your neighbors?

9 A. A little bit.

10 Q. Did there come to be some rumors about your husband while
11 you were there?

12 A. Yes. They would ask questions if he was working for the
13 government here in the United States.

14 Q. Okay. Who would ask those questions?

15 A. Neighbors.

16 Q. They would ask if he was working for the government?

17 A. Yes.

18 Q. Was he working at all?

19 A. In Mexico, he was--at the time, no, but he was looking
20 for work. But at the time when those rumors were going on, no.

21 Q. Okay. Now, he--was he seeking a job, like, as an English
22 teacher?

23 A. Uh-huh, yes.

24 Q. But at the time, he wasn't working; is that right?

25 A. Yes, uh-huh.

1 Q. And you owned a German Shepherd?

2 A. Yes.

3 Q. And did the neighbors say why they thought he was a
4 federal agent?

5 A. Did they say why? Well, maybe because--so the dog--
6 They didn't really say. They would ask questions. Maybe
7 because he really didn't fit into the community there, because
8 he--he would go out and walk the dogs. We had a couple of
9 dogs. And I think it was because of that.

10 Q. Okay. You say he didn't fit into the community there.
11 Does--a person who was raised in American schools, does the
12 Spanish have an accent to it?

13 A. Yes. He doesn't speak--his Spanish is not very--it's--
14 he speaks Spanish, but it's--he has an accent, and he has--he
15 won't--certain words, he won't pronounce them correctly.
16 That's--

17 Q. Okay. So is it obvious to a native Spanish speaker that
18 he's from somewhere else?

19 A. Yes.

20 Q. Did there come a time when you moved away from Los Altos
21 to a different neighborhood?

22 A. Yes.

23 Q. Where was that?

24 A. It was--the colonia was called Gamas (phonetically), more
25 towards the center of the city.

1 Q. Okay. And it--it's called a colonia? Does that mean
2 neighborhood?

3 A. Right, yes. That's what they call it in Mexico,
4 different colonias or different neighborhoods.

5 Q. Is that a standard, stand-alone house, or was that like
6 an apartment?

7 A. It was a--well, it was a house, but it's a little house,
8 two-bedroom. Just two bedrooms, kitchen, and one bedroom
9 (sic). But it was--it was a house.

10 Q. Did you continue to receive questions about him being a
11 federal agent at your new house?

12 A. Not from the neighbors there, but of--we'd be--we were
13 being watched by certain people.

14 Q. Okay. You say you were being watched. How did you know
15 you were being watched?

16 A. We saw them. There were black SUVs parked across the
17 street, and they would--they would just watch us. They would
18 follow us too, so--

19 Q. Okay. So there were people in black SUVs that would
20 follow you?

21 A. Uh-huh.

22 Q. Were these people armed?

23 A. Yes.

24 Q. Okay. How were they armed?

25 A. With guns, in their--

1 Q. Like sidearm guns--

2 A. Right, yes.

3 Q. --or long rifles or--

4 A. Well, I saw them in their--on their side. Usually go
5 like that, too (indicating), I guess for intimidation; I don't
6 know.

7 Q. Oh, so pistols?

8 A. Right.

9 Q. And sometimes they would move their jacket back so you
10 could see the handle and kind of--

11 A. Uh-huh. Right. They were big men too, so pretty
12 intimidating.

13 Q. You said they were big men?

14 A. Yes.

15 Q. You mean physically large men?

16 A. And tall.

17 Q. Okay. And did you figure out who they were?

18 A. I have my suspicions. I think they were cartel members,
19 because we--we got threatened, or my husband did, and they
20 would follow us, so--

21 Q. Okay. So you saw these men with guns, and sometimes they
22 would follow you?

23 A. Yes.

24 Q. Was there a time when your house was searched?

25 A. Yes.

1 Q. What happened?

2 A. There was just--we weren't home, and they went in there,
3 and there was--nothing was taken, except there was paperwork
4 moved around.

5 Q. Okay. Was the house--when you came back to the house,
6 had it obviously been somebody else in there?

7 A. Uh-huh.

8 Q. But nothing was removed?

9 A. No, there was nothing taken.

10 Q. Okay. Was there a time when you, yourself, were
11 physically confronted by somebody?

12 A. Yes. One morning when I was taking my children to
13 school--

14 Q. Well, let's--

15 A. Oh.

16 Q. I know it happened more than once, so let's start with
17 the first one, to make sure we're talking about that one. When
18 was the first time that happened?

19 A. The first time when I was blocked into the house, is--

20 Q. The first time that you had a physical confrontation with
21 these people.

22 A. A physical confrontation was when I was taking my
23 children to school in the morning.

24 Q. Okay. What happened?

25 A. I was driving my regular route to go to the--to the

1 border, and I stopped at a stoplight, and one of the men got
2 out of the car and went to the passenger's seat with my--where
3 my son was sitting, started banging on the window, yelling,
4 making signs so I could roll it down. I didn't have time to do
5 anything. When the light turned green, I just--I left.

6 Q. Okay. So just to clarify, this man who came up, had you
7 seen him before?

8 A. Yes. It was the same vehicles--one of the same vehicles
9 that--

10 Q. So it was one of the same vehicles where they had been
11 following you and these men were armed?

12 A. Uh-huh.

13 Q. Is it legal to carry guns around in Mexico?

14 A. Not for a civilian, no. Only police are allowed to do
15 that.

16 Q. Okay. Did this man appear to be a policeman in police
17 uniform?

18 A. No.

19 Q. Are you allowed to have a gun in your house for
20 self-protection?

21 A. No, not in Mexico.

22 Q. Okay.

23 A. That's why we had dogs. That was one of the reasons.

24 Q. Are there people that carry guns even though they're not
25 police?

1 **A.** The cartels are known to do that.

2 **Q.** Okay. You talk about the cartels. What are you talking
3 about when you mean a cartel?

4 **A.** The people that control the area, that sell drugs or
5 pack--bring drugs to the United States or distribute drugs
6 around there.

7 **Q.** Okay. So--

8 **A.** They're usually very violent.

9 **Q.** Do different cartels live in different cities?

10 **A.** Yes.

11 **Q.** All right. And Acuna is a city that's on the border with
12 Texas; is that right?

13 **A.** Uh-huh, yes.

14 **Q.** And would there be drug traffic moving out of Acuna into
15 the United States?

16 **A.** Yes, I assume so.

17 **Q.** Okay. All right. When was the next time that you,
18 yourself, were confronted by these people?

19 **A.** I went to my house to get something real fast. My kids
20 and my husband were somewhere else. I went to the house to get
21 something, ran in, ran back out, and these people were blocking
22 me, and I couldn't--

23 **Q.** Okay. So you went--you were with your whole family, and
24 you left wherever you were. Where were you guys at?

25 **A.** It was a skating rink that they put sometimes during the

1 winter in Acuna.

2 Q. Okay. So you left the skating rink and went--drove to--
3 drove home to get something?

4 A. Yes, uh-huh.

5 Q. Okay. And you went in the house and came out?

6 A. Uh-huh.

7 Q. And these people had blocked you in?

8 A. Yes.

9 Q. How had they done that?

10 A. They put their vehicles behind me. It was a--the parking
11 space was kind of a little hill where I used to go up, and they
12 put their vehicles right behind me so I--I wasn't able to back
13 up or leave or anything.

14 Q. Okay. And at this point, had you already been offered or
15 threatened about running drugs?

16 A. Yes.

17 Q. Okay. How did you--what was your reaction to the
18 proposal that you run drugs?

19 A. Absolutely not. I--there's no way. I was just--I was
20 surprised that they would do that, but I--I was surprised and a
21 little afraid, too, when they--when they said that, because
22 I've never been--I have never done any such thing like that.

23 Q. Okay. So you refused--

24 A. Right.

25 Q. --to run drugs across the border for them?

1 A. Yes.

2 Q. Okay. And when they blocked you in, this was after you
3 had refused?

4 A. Yes.

5 Q. What did you do?

6 A. I grabbed my dog and I went inside the house and waited.
7 And there was shootings that day right after I went inside in
8 the house.

9 Q. You say right after you went in the house, there was
10 shooting?

11 A. Uh-huh.

12 Q. Like in the street?

13 A. On the street, yes.

14 Q. How long after you got in your house would you say there
15 was shooting and whatnot going on?

16 A. A couple minutes. It wasn't long. A couple minutes.

17 Q. Okay. So you went in the house, and a couple minutes
18 later--

19 A. The shooting started.

20 Q. Like a gunfight, or just shooting in the air, or do you
21 know?

22 A. Later on, I found out that it was a gunfight between
23 the--the GATES that they call, it's like a military that they
24 send to--between them and the cartel, one of the cartel--the
25 cartel members.

1 Q. Okay. So there was a gunfight between the cartel people
2 and some kind of law enforcement people right there in your
3 street?

4 A. Uh-huh. Uh-huh.

5 Q. Did you think that you, yourself, were in physical
6 danger?

7 A. Yes.

8 Q. Did you think that you had specifically been targeted?

9 A. Yes.

10 Specifically myself, or my family?

11 Q. Well, you, your family--

12 A. Yes.

13 Q. Okay. Did you continue to hear rumors or stories that
14 Rafael was some sort of a federal agent?

15 A. Yes.

16 Q. Where did you hear those from?

17 A. From different people there. I know that they found out
18 that he was in the military, so that's probably what--one of
19 the reasons that they believed that.

20 Q. After your house had been searched, did the cartel people
21 seem to know more about you, like the details of your life?

22 A. Yes.

23 Q. Okay. Now, you didn't actually see them in your house
24 looking through your stuff?

25 A. Oh, no, no.

1 Q. Did your--were the vehicles--your vehicle tires slashed a
2 couple of times?

3 A. Yes.

4 Q. When you got up in the morning, was there a procedure you
5 went through before you took the kids across the border as far
6 as the car goes?

7 A. Yes. My husband would get out of the--turn on the car
8 and look around the car and would get actually underneath the
9 car to check if anything was being put there.

10 Q. Okay. Like--anything like drugs or a bomb or something
11 like that?

12 A. Right.

13 Q. In Acuna, were you--did you become aware that people had
14 been murdered?

15 A. Yes.

16 Q. Was that a fairly regular occurrence or was it rare?

17 A. While we were there, it was pretty--pretty common in
18 those--the years that we lived there.

19 Q. Going back to this incident when the guy came up to your
20 car window and banged on it to roll down the windows, was there
21 law enforcement nearby?

22 A. Yes, there was a police car parked in a little--kind of
23 like a 7-Eleven, called an (speaking Spanish). They were
24 parked there.

25 Q. Did they do anything to help you?

1 A. No.

2 Q. Could they see what was going on?

3 A. Yes. There were several people there who could.

4 Q. All right. And you're saying these are the same people
5 that had been following you around with pistols in their
6 waistbands?

7 A. Yes.

8 Q. Which one of you decided to come back to the
9 United States?

10 A. I'm sorry, I didn't hear that.

11 Q. Between the two of you, which one of you decided to come
12 back to the U.S.?

13 A. I did.

14 Q. Okay. And why?

15 A. Because of fear that they might get one of our kids and
16 harm them, or one of them.

17 Q. Was kidnapping something that you heard about was pretty
18 regular down there?

19 A. Yes.

20 Q. Okay. Did you become aware that they shot at your
21 husband?

22 A. I'm sorry?

23 Q. Did you become aware of when they shot at your husband?

24 A. Yes, I was aware.

25 Q. Was that also something that led you to want to get out

1 of there?

2 A. Yes.

3 Q. After you came back to the United States, where did you
4 relocate?

5 A. We moved to an area in San Angelo called Grape Creek.
6 It's out in the country, outside of San Angelo.

7 Q. Grape Creek in San Angelo?

8 A. Yes, uh-huh.

9 Q. And did you take any steps once you got there to avoid
10 the cartels finding out where you were?

11 A. Yes. We moved out to the country. We--nobody knew where
12 we lived. Still, a lot of people don't know where we live. My
13 family, we have to go pick them up and take them to my house if
14 they visit. The house is not under our name. Pretty much--

15 Q. What about your kids? Are they in public school?

16 A. No, they--they're home-schooled.

17 Q. Had they previously been in public school?

18 A. Yes.

19 Q. Why did you take them out of public school and
20 home-school them?

21 A. Several reasons, one of them being that I don't want--I
22 wanted to watch them be under my supervision so that in case
23 anybody found out where we were, they would be with me. I
24 mean, it's a--it's a fear that I still have.

25 Q. When you left Acuna and came to the United States, do you

1 think that that made the cartel think even more likely that
2 your husband was DEA?

3 A. It's possible, yes.

4 Q. How long have y'all been in San Angelo?

5 A. I've been here almost three years--or, well, two and a
6 half.

7 Q. So you came back in the spring of 2014?

8 A. Well, no. I came here and got the place and would go see
9 him back and forth at the--at the end of 2013 or early 2014.

10 Q. Okay.

11 A. I came in 2013.

12 Q. Okay. And you got--

13 A. Me and the children.

14 Q. You got things set up?

15 A. Yes.

16 Q. All right. And then you brought him?

17 A. Yes. Well, he--he came.

18 Q. All right.

19 MR. SLOAN: I'll pass the witness.

20 CROSS-EXAMINATION

21 BY MR. LONG:

22 Q. Ma'am, my name is Sean Long. I represent the
23 United States Attorney's Office in this proceeding. I'm going
24 to ask you a few questions. If you don't understand my
25 question, please just ask me to repeat it and I'll be glad to.

1 Okay?

2 **A.** Sure.

3 **Q.** Do you go by Ms. Cortez? Ms. Cortez-Marin? Does it
4 matter?

5 **A.** Doesn't matter. Cortez-Marin is okay.

6 **Q.** Okay. Ms. Cortez-Marin, when would you say these
7 encounters that you've described with the cartels started? If
8 you could give us an approximate month and year.

9 **A.** They started in 2013. We moved there in 2012. They
10 started at the end of 2012, early 2013.

11 **Q.** And you said it started essentially with hearing rumors
12 of people asking questions, hey, does your husband work for the
13 government?

14 **A.** Yes.

15 **Q.** You told the jury previously that your husband wasn't
16 working--is that correct?--while he was in Mexico? He wasn't
17 working anywhere in Acuna?

18 **A.** Not at the time when those rumors were going on, no.

19 **Q.** What was he doing before?

20 **A.** Before, he was in Yucatan, in Yucatan in Mexico, South
21 Mexico. He was working as an English teacher.

22 **Q.** Where is Yucatan?

23 **A.** It's close to Cancun, I guess, if that helps. It's at
24 the end of Mexico, the little tail.

25 **Q.** Okay. South Mexico, I mean, pretty far away. Would that

1 be a fair statement?

2 A. Uh-huh.

3 Q. How did your husband get down to Yucatan?

4 A. In 2008, he was deported, and he went to live in Yucatan.

5 Q. So in 2008, the jury has heard testimony he was deported
6 through San Ysidro, California. Does that sound familiar to
7 you?

8 A. Yes.

9 Q. So you're saying when he was deported through California
10 at San Ysidro, he made his way down to Yucatan?

11 A. Yes.

12 Q. Was he by himself? Were you with him?

13 A. At the beginning, he was by himself. In 2010--no, 2009,
14 I moved there with the kids.

15 Q. So in 2009, you took your family-- How many children did
16 you have at that time?

17 A. Four.

18 Q. Four?

19 A. Uh-huh.

20 Q. 2009, you took all four of your children down to Yucatan?

21 A. Yes.

22 Q. Let me ask, did Mr. Marin-Pina--did Rafael have any issue
23 getting--that you're aware of, from where he was deported,
24 San Ysidro, California, down to Yucatan, did he have any issues
25 getting down there?

1 **A.** Any issues? I don't know of any. I don't know the
2 details. I don't know.

3 **Q.** And what I mean by that, was he able, through language
4 and his knowledge of Mexico, to navigate his way down to
5 Yucatan?

6 **A.** He took a--I believe he took a bus. I don't know if
7 that--if he had any issues doing that. I don't know.

8 **Q.** When did the cartels start threatening you while you were
9 in Yucatan?

10 **A.** In Yucatan?

11 **Q.** Yes.

12 **A.** There was some kind of fights and shootings in Yucatan,
13 but it didn't happen in Yucatan. That's not why we-- The
14 shootings and threats happened in Acuna.

15 **Q.** So after he was deported and was in Yucatan, did you
16 receive specific threats from the Zetas, through the other
17 military personnel that you've been describing here in court
18 today? In Yucatan, did you receive any of those threats?

19 **A.** No.

20 **Q.** But ultimately you made the decision to move to Acuna; is
21 that correct?

22 **A.** I moved back to the United States in two thousand--I
23 stayed a year in Yucatan with him. I moved back to the
24 United States because the children were having trouble in
25 school. They were not--one of them was in first grade and was

1 not able to read by the end of the year, because they didn't
2 read the Spanish language. So I moved back. He stayed in
3 Yucatan.

4 After a while, I moved to Texas with my parents. I
5 went back to California, from Yucatan to California. I came to
6 Texas with my parents, were buying a house here with them. I
7 ended up losing the house, and that's when I decided that we
8 wanted our family together, so we moved to Acuna, as--we didn't
9 really know much about it. It was just trying it out.

10 Q. How did your husband get from Yucatan to Acuna?

11 A. He took a plane.

12 Q. He took a plane?

13 A. Uh-huh.

14 Q. He flew?

15 A. Yes.

16 Q. Was he able to fly within the Country of Mexico because
17 he was a Mexican citizen?

18 A. Yes.

19 Q. Was he able to take a bus within Mexico because, again,
20 he was a Mexican citizen?

21 A. Yes.

22 Q. Any issues traveling from Yucatan to Acuna that you're
23 aware of?

24 A. I'm sorry, I didn't hear that.

25 Q. Did he have any issues when he traveled from Yucatan to

1 Acuna--

2 A. Not that I know of.

3 Q. --that you're aware of?

4 A. No, not aware.

5 Q. Did he have any family in Yucatan or Mexico City or
6 anywhere else in Mexico?

7 A. I believe he has aunts that live there, but that's--
8 that's it. He doesn't really know them. He grew up in the
9 United States, so--

10 Q. So how did--was it your decision to go to Yucatan? Your
11 husband's? Who made the decision to travel there? Was there a
12 particular reason that area was chosen?

13 A. Well, because his parents were born there, and that's
14 where he--I believe he had been in the past there. In '99, he
15 had been in Yucatan and he had worked as an English teacher, so
16 that's--I assume that's the reason. He wanted to go there in
17 the first place, in 2008, and after he got deported, I--I chose
18 to move there with the kids and to be with him.

19 Q. So he had some--I don't want to say connections, but
20 maybe some history in Yucatan that made that a desirable
21 location, at least in his mind?

22 A. Yes.

23 Q. When you started-- Let's talk about when your vehicle
24 was blocked into your driveway. You stated you were by
25 yourself on that location--excuse me--at that time?

1 A. Yes.

2 Q. Tell us again, when was that?

3 A. That was at the end of--that was at the end of 2014.

4 That was one of the last times that that--that--that's actually

5 the reason why I got so afraid and wanted to--just for him to

6 come back.

7 Q. You said the end of 2014?

8 A. No, I'm sorry, end of 2013.

9 Q. Okay.

10 A. Yes, I'm sorry.

11 Q. No, that's okay. I just wanted to be clear on the time

12 period. End of 2013 is when your vehicle was blocked in; is

13 that correct?

14 A. Uh-huh.

15 Q. You said that was one of the last incidents that you had

16 directly with who you believed to be cartel members?

17 A. Yes.

18 Q. Did they ever identify themselves to you as, hey, we're

19 from the cartel?

20 A. No.

21 Q. But they did flash their gun at you and--

22 A. Yes.

23 Q. --and let you know that they have a gun?

24 A. And it-- Yes. And it's well known in Mexico that they

25 will drive black vehicles, black trucks or black--black

1 vehicles. That's what they drive. That's what they're
2 identified.

3 Q. And was it that occasion you said that you went back into
4 your house and there was a gunfight sometime thereafter?

5 A. Yes.

6 Q. You said it was approximately a couple of minutes that
7 the gunfight occurred; is that correct?

8 A. Uh-huh.

9 Q. Who do you believe the parties were that were involved in
10 that gunfight?

11 A. I know, because of finding out later, it was the cartels
12 fighting with the police force there.

13 Q. So is it safe to say that the cartels didn't operate with
14 free rein everywhere, that there was some opposition to the
15 cartels in Acuna specifically?

16 A. Well, yeah, those years the government brought in the
17 police force, and that's when it got really bad. The shootings
18 between them got--it actually got worse because of that.

19 Q. So the cartel wasn't necessarily running the government
20 totally. There was opposition to them. Is that a fair
21 statement?

22 A. That's what it--that's what it seems, but I know that
23 there is government people involved in the cartels there. Most
24 people there know that.

25 Q. And these sorts of conflicts were happening closer to the

1 end of your time there in Acuna?

2 A. It happened throughout--throughout the whole time there.
3 It just intensified when we moved to the second house, the
4 threats and the being watched. But these shootings were
5 happening since 2012, since we moved there.

6 Q. So are you telling this jury that your living there is
7 what caused these shootings and these conflicts?

8 A. Us living there? No, that's not what I'm saying.

9 Q. Okay. And what I mean to ask is, are these sorts of
10 conflicts and shootings things that other people in the
11 neighborhood were also being exposed to?

12 A. Yes.

13 Q. Other people in Acuna being exposed to?

14 A. Yes.

15 Q. But again, none of those problems in Yucatan; is that
16 correct?

17 A. I'm sorry?

18 Q. Did you have any of those problems in Yucatan?

19 A. Not really. There was also shootings and police once in
20 a while, but not directly--direct threats to us.

21 Q. So sort of general threats the community would have to
22 deal with, but no specific threats towards you or your family?

23 A. There was specific threats to us and the family. The
24 fact that they come to me and follow me and try to talk to me
25 while I'm driving, I--

1 Q. Yes, ma'am, and I apologize. I mean in Yucatan, there
2 was--

3 A. Oh, in Yucatan?

4 Q. --general threats, not specific to you?

5 A. Right, yes.

6 Q. So the specific threats, you're saying, happened in
7 Acuna; is that correct?

8 A. Yes.

9 Q. When your husband was unemployed in Acuna, what would he
10 do during the day?

11 A. He would walk the dogs, take hikes with the dogs.

12 Q. How was he trying to apply for jobs, or was he applying
13 for jobs?

14 A. Yes. He was trying to apply for teaching jobs, and
15 there's also--I don't know what they call it in English--
16 (speaking Spanish), a place where they--I don't know what it's
17 called. There's different places where he--where one of a--a
18 person that we knew there, a man was actually driving him to
19 different places to try to find a job for him to recommend and
20 to--to try and find a job for him.

21 Q. So he was actively looking for a job?

22 A. Yes.

23 Q. Who was the first one to mention--or how did you come to
24 know that the cartel wanted you and your family to do drug runs
25 over the border? Where did that information come from?

1 **A.** I believe it was told to him. They never talked to me
2 directly, but--

3 **Q.** Okay. So they didn't talk to you directly; they talked
4 to your husband--

5 **A.** Right.

6 **Q.** --and he relayed to you, they want us to run drugs?

7 **A.** Right.

8 **Q.** What was your understanding of how that arrangement was
9 going to work?

10 **A.** There was no arrangement or anything. It was just told--
11 the thing is that they told he's--he's practically a traitor
12 because he's--he was in the Marines in the United States.
13 They--they--my understanding is that they wanted him to prove
14 himself to them that he wasn't a type of a traitor.

15 **Q.** And he would prove that by having his wife and children
16 run drugs to the United States?

17 **A.** Uh-huh. Uh-huh.

18 **Q.** Was he supposed to accompany you with the drugs?

19 **A.** No, I don't think so.

20 **Q.** Supposed to send you by yourself with the drugs over the
21 border; you would do whatever was required and come back?

22 **A.** I believe so. That's--I--we never got as far as
23 discussing anything like that because there's just no way.

24 **Q.** When did that proposal happen?

25 **A.** I would say the beginning of 2013.

1 Q. Okay. Beginning of 2013? So that would have been well
2 before you were blocked into your driveway?

3 A. Uh-huh.

4 Q. When you refused to cooperate in any type of arrangement
5 for smuggling drugs, is that--was it after that that the
6 incident where the individuals knocking on your window
7 occurred--of the window of your vehicle?

8 A. Yes, that was after.

9 Q. Okay. So he makes the proposal--someone makes the
10 proposal, according to your husband, that you need to run drugs
11 to prove that you don't work for federal law enforcement; you
12 refuse; and then subsequent to that, someone knocks on your
13 window and someone blocks you in the driveway. Is that
14 correct?

15 A. Yes. Well, he refused. He just commented--made the
16 comment to me, this is what's going on; there's being--I'm
17 being threatened and the family is being threatened. And
18 that's--yes, that's after, that's correct.

19 Q. When did the conversation happen that, hey, we need to
20 get out of here; we need to go somewhere else? When did that
21 conversation happen?

22 A. We've been--we were talking it over practically all the
23 time. I was actually trying to submit applications to USCIS to
24 have him come here legally. I filled them out. There was a
25 money issue though. Those applications are expensive. And so

1 I was trying to--I was talking about it the whole time, waiting
2 to--to get out of here. This is mainly because of the
3 children, and the shootings were getting worse.

4 Q. So you mentioned that you had filed--you said USCIS?

5 A. Yes. It's an application to ask for permission for him
6 to re-enter the United States, or reapply. I didn't file it.
7 I filled out the applications. I was thinking about doing
8 that. There's actually a \$600 fee to file one of those
9 applications and, I believe, 500 for another that needs to go
10 with that one.

11 Q. So you were aware there was an application process and a
12 way for your husband to lawfully enter the United States?

13 A. Yes, I knew that there was a way. I know more now. I
14 know that he qualifies for citizenship based on his military
15 background. I actually--we have actually filed the application
16 already. Back then, I didn't know. I only know about those--
17 that specific application that--that I had gotten from the
18 Internet, read the instructions, and was planning to file it as
19 soon as I got the money together.

20 Q. When did you make the decision that you were going to
21 leave and take your family but leave your husband back in
22 Mexico? When did you make that decision? When did that
23 actually happen?

24 A. That happened-- Gosh. I made the decision way before I
25 left. I mean, it was just a matter of getting scared enough to

1 just come and just look for a place. I had a brother that was
2 living in Eldorado, Texas, and I came to stay with him first to
3 look for a place, and we would go and stay there. And then
4 from there, it just went slowly. It didn't really--it wasn't a
5 decision that, I'm leaving today and I'm not coming back.

6 Q. Okay. Did you take your children with you when you went
7 to Eldorado?

8 A. Yes.

9 Q. Okay. When, do you know--month, year--that that
10 happened?

11 A. Month and year? 2013, I visited my brother. I actually
12 visited Eldorado a few times, because I had lived there and I
13 had a couple of things that--clothing and stuff, and so I--it
14 wasn't the only time that I went.

15 Q. You said that was the-- Would that be around the end of
16 2013?

17 A. About the end, yes, I would say so.

18 Q. So after you took your children out--and let's say it was
19 the end of 2013, if that's when the threat where you were
20 blocked in your driveway happened--you said that was the end of
21 2013. If you--did you move your children after that threat or
22 before the threat?

23 A. It was before.

24 Q. Okay. So you had gone back when that threat happened?

25 A. Yes, I was--yes.

1 THE COURT: All right, Counsel. We're going to
2 stop at this point and recess for lunch.

3 Members of the jury, we're going to be in recess
4 until 1:30. Please keep all my instructions in mind. I'll
5 have the marshal take you out through this door here, and he'll
6 show you how to get back to the jury room without having to
7 come back through the courtroom. Please be back in the jury
8 room at 1:30.

9 Court will stand in recess.

10 (LUNCH RECESS TAKEN)

11 Q. (BY MR. LONG) Ms. Cortez-Marin, I'd like to pick up
12 where we left off. We were discussing a little bit about the
13 timeline of you were going back and forth from Mexico to the
14 United States.

15 A. Uh-huh.

16 Q. And what I wanted to start back with was by asking, when
17 did you get the residence in the San Angelo Grape Creek area?

18 A. It was in mid of 2013.

19 Q. I'm sorry, when was that?

20 A. Mid-2013.

21 Q. Middle of 2013?

22 A. Uh-huh.

23 Q. Would that have been the address 9869 Possum Hollow?

24 A. Yes.

25 Q. So for your entire time that you were residing in

1 San Angelo, was that your residence?

2 A. Yes.

3 Q. Was that a trailer house?

4 A. I'm sorry?

5 Q. Is that a trailer or duplex? Apartment?

6 A. It's a trailer.

7 Q. That's located, I think you already stated, in Grape
8 Creek, Texas?

9 A. Yes.

10 Q. Is that just north of San Angelo?

11 A. Yes, a little bit north.

12 Q. So mid-2013, you had a residence in San Angelo; is that
13 correct?

14 A. Yes.

15 Q. Were you still, at that time, going back and forth to
16 Acuna to see Mr. Marin-Pina?

17 A. Yes.

18 Q. Would you take your family when you went with--when you
19 went back to Mexico?

20 A. Yes, my four children.

21 Q. So you had made the decision to leave because Acuna was
22 not going to be a safe location for you and your family; is
23 that correct?

24 A. Yes.

25 Q. But you would still, on occasion, take your family back

1 to Acuna to be at the same residence that y'all were living at
2 in Acuna where Mr. Marin-Pina was?

3 A. Yes.

4 Q. How often--let's just go from mid-2013 when you had the
5 residence in San Angelo, how often did you return to Acuna with
6 your family?

7 A. Mostly weekends.

8 Q. Ma'am?

9 A. Mostly weekends.

10 Q. Pretty much every weekend, you would return to Acuna?

11 A. Pretty much.

12 Q. With your children?

13 A. Uh-huh.

14 Q. Any issues crossing the border getting back into Mexico?

15 A. Getting into Mexico?

16 Q. Yes, ma'am.

17 A. No, not really.

18 Q. With just you and your children, is what I'm asking.
19 When you would take your children, would Mr. Marin-Pina be with
20 you as you were crossing the border on these occasions?

21 A. No.

22 Q. But you and your children, no issues going to Acuna from
23 the United States?

24 A. That's right.

25 Q. Any issues returning from Acuna back to San Angelo?

1 **A.** You mean at the border. Right?

2 **Q.** Yes, ma'am.

3 **A.** No.

4 **Q.** And I don't want to minimize the threats that you have
5 stated to the jury about, but were the threats of such a nature
6 that you still felt safe taking your children back to that
7 residence on the weekends?

8 **A.** We wanted to see my husband, and we have grown accustomed
9 to being together, so at the moment, I was filling out
10 applications for--to turn in to the USCIS, so we were talking
11 about that and getting ready to file the applications. I--I
12 felt scared, but I just wanted to see my husband. Wanted to
13 see--

14 **Q.** Sure. You didn't think it was irresponsible, as a
15 mother, to take your children to see your husband in Acuna?

16 **A.** Not if I was watching them, if--I mean, not with me. I
17 mean, if I was sending them with somebody else, maybe.

18 **Q.** But you felt that you were in a position, or at least
19 when you got to Acuna, you and your husband would be able to
20 protect your family and children for those weekends?

21 **A.** Yes, at least try.

22 **Q.** You stated that while you were in the United States, you
23 were also working on the application process to allow
24 Mr. Marin-Pina to lawfully enter the United States; is that
25 correct?

1 A. Yes.

2 Q. Is that why he had not joined you already?

3 A. Yes.

4 Q. So were you aware that it would have been illegal for
5 Mr. Marin-Pina to come with you from Mexico to the
6 United States on those trips?

7 A. Yes.

8 Q. You stated previously that you were waiting to get the
9 fees, the filing fees for that application and that's the
10 reason it had not been submitted; is that correct?

11 A. Uh-huh, yes.

12 Q. Were you working anywhere in San Angelo or did you have
13 any type of gainful employment in San Angelo?

14 A. Yes, I worked as a waitress for a while at the beginning.
15 Mainly as a waitress.

16 Q. But were you being required to pay the rent at the
17 residence that you were living at at--on Possum--excuse me--
18 Possum Hollow Road?

19 A. Yes.

20 Q. Do you recall what your rent was?

21 A. 450.

22 Q. 450? Would that be per month?

23 A. Yes.

24 Q. When did Mr. Marin-Pina join you in San Angelo? How did
25 that come about?

1 A. I'm sorry?

2 Q. When did your husband join you in-- Did there come a
3 time when your husband joined you in San Angelo?

4 A. Uh-huh.

5 Q. Do you recall when that was?

6 A. Early 2014.

7 Q. Early in 2014?

8 A. (Witness nods head up and down.)

9 Q. What is your understanding as to how he crossed the
10 border?

11 A. I brought him in.

12 Q. You brought him in?

13 A. Yes.

14 Q. Okay. How did you bring him in?

15 A. In my car.

16 Q. And how exactly-- What kind of car was it?

17 A. It's an older Nissan Pathfinder.

18 Q. An older Nissan Pathfinder?

19 A. Uh-huh.

20 Q. So did you just secrete him in the back and hide him
21 under some things? How did you get him across the border?

22 A. Well, he just sat in the back seat. He stayed in the
23 back, in the--in the back seat.

24 Q. So he just sat in the back seat; you went through the
25 border checkpoint, no issues?

1 A. No, no issues.

2 Q. Did they ask who he was?

3 A. No, they didn't. They--they--it was early in the
4 morning, so no. It was pretty much just Border Patrol.

5 Q. Were you, at some point, stopped, either right at the
6 border or at some checkpoint, where somebody with immigration
7 authority or immigration official had to verify your
8 documentation--

9 A. Yes.

10 Q. --on this particular trip where you smuggled
11 Mr. Marin-Pina back into the country?

12 A. Yes.

13 Q. Were your children with you on this trip?

14 A. Yes.

15 Q. So your children were with you when you smuggled
16 Mr. Marin back to the country?

17 A. (Witness nods head up and down.)

18 Q. Did they verify your documentation on this particular
19 occasion at some point?

20 A. Mine, yes.

21 Q. Did they verify your children's documentation?

22 A. No.

23 Q. Did they verify your husband's documentation?

24 A. No.

25 Q. So whoever was looking in the vehicle or stopping the

1 vehicle just never-- Did they notice Mr. Marin-Pina in the
2 back?

3 A. I don't know. I don't know. They--there was the
4 children in the back, but I don't think so, no.

5 Q. But your testimony is that he was sitting up-- Would he
6 have been obvious to someone who was looking in the vehicle?

7 A. Probably. I don't know. I--I would think so.

8 Q. Let me ask about the circumstances that you brought
9 Mr. Marin-Pina across the border. Did you start from your
10 house, from your residence location in Acuna and just drive to
11 the border--

12 A. Yes.

13 Q. --or did you meet him somewhere else?

14 A. It was at the house.

15 Q. So you got in your vehicle at your house. Did y'all pack
16 some things?

17 A. No.

18 Q. Did you leave whatever his belongings were just at the
19 home there in Acuna?

20 A. Yes.

21 Q. What time did you set out from Acuna?

22 A. Don't remember the exact time. It was early in the
23 morning.

24 Q. Early in the morning?

25 A. (Witness nods head up and down.)

1 Q. Dark? Light outside?

2 A. Uh-huh, dark.

3 Q. Dark?

4 Were there any vehicles following you when you went
5 to the border?

6 A. They didn't follow us. I noticed the vehicles that had
7 been watching us just parked. No one followed us though.

8 Q. Did any of the vehicles follow you as you went to the
9 border checkpoint?

10 A. I didn't notice if they did.

11 Q. Was there much traffic on the road that morning when you
12 drove to the border checkpoint?

13 A. The usual, I think. It's--it's--there's usually a lot of
14 traffic, so--I really didn't think about--didn't notice if
15 there was.

16 Q. Well, let me ask it this way. Did you feel that you were
17 being followed or pursued when you left Acuna to go to the
18 border?

19 A. I was afraid that we were being followed.

20 Q. But did you actually see any vehicles--

21 A. Did I see any?

22 Q. --or anybody following you?

23 A. No. I didn't pay attention to it.

24 Q. Was it such a threat that you felt like you should tell
25 somebody--the immigration officer that you visited with, did

1 you tell him about any specific threats you had been receiving
2 while in Mexico?

3 A. No, I didn't.

4 Q. Did Mr. Marin-Pina, from the back seat, mention to the
5 immigration officers, hey, I'm illegal; I'm trying to flee the
6 cartel?

7 A. No.

8 Q. Did he try to present any type of documentation to the
9 immigration officers?

10 A. No.

11 Q. And again, no issues leaving with Mr. Marin-Pina in your
12 vehicle and heading north?

13 A. No.

14 Q. At some point, did the immigration officer ask you or
15 anyone else in the vehicle if they were--if you were all U.S.
16 citizens?

17 A. No. I showed my--my passport card.

18 Q. So you showed them your passport to verify your
19 citizenship; is that correct?

20 A. Yes, yes.

21 Q. And you're a naturalized United States citizen; is that
22 correct?

23 A. Yes.

24 Q. Where is your family from?

25 A. My parents, you mean?

- 1 Q. Yes, ma'am.
- 2 A. They are from Mexico.
- 3 Q. Where do they live in Mexico?
- 4 A. They lived in Michoacan. They live in California now.
- 5 Q. Okay. They now live in California?
- 6 A. Yes.
- 7 Q. Are they also naturalized?
- 8 A. They are legal residents and naturalized.
- 9 Q. So they're here lawfully in the country?
- 10 A. Yes.
- 11 Q. Back to my previous question, did the immigration officer
- 12 ever ask you or anyone else in the vehicle if they were
- 13 United States citizens?
- 14 A. No.
- 15 Q. So at no point did Mr. Marin ever have to address an
- 16 immigration officer whenever you were stopped going from Acuna
- 17 to Del Rio that day?
- 18 A. No.
- 19 Q. Where did you go after you crossed the border?
- 20 A. We stayed at--we went to a park, actually, and stayed
- 21 there for a little bit and we headed to Eldorado.
- 22 Q. Where did you go to a park at? In Del Rio or somewhere
- 23 else?
- 24 A. In Del Rio.
- 25 Q. So you actually stopped at a park in Del Rio?

1 A. Uh-huh.

2 Q. What did you do at the park in Del Rio?

3 A. Just sit there and talk and just sit there, watch the
4 kids play.

5 Q. Did you feel like, after you had gotten across with
6 Mr. Marin--was that a nervous situation for you?

7 A. Yes.

8 Q. Why is that?

9 A. Because I was nervous; nervous, in the first place,
10 because I was afraid of what was going on. It got--it had
11 gotten too--it was too much, what was going on there, that I
12 was nervous about that. I was nervous about coming back here.

13 Q. Why were you nervous about coming back here?

14 A. Because I would--because of the fear of being followed.

15 Q. So you were afraid of being followed?

16 A. Yes.

17 Q. Were you afraid of being caught potentially violating
18 federal laws by assisting an alien coming to the United States?

19 A. No, I was not afraid of that. If they had caught us, I
20 would have said the truth.

21 Q. Which would have been you were under duress?

22 A. Yes. We were, yes.

23 Q. You were being chased by the cartel?

24 A. Yes.

25 Q. But you didn't think it was pertinent to tell immigration

1 officials right then and there?

2 A. No, I didn't. I didn't think about that, and I didn't
3 know that you could do that. I didn't know things that I know
4 now.

5 Q. After you stopped at the park in Del Rio, you said you
6 were nervous of being pursued; is that correct?

7 A. Yes.

8 Q. But at some point, the situation was such you thought it
9 was okay to stop at a park?

10 A. Yes. Once in the United States, yes.

11 Q. So once you got into the United States, were some of
12 those fears of being pursued--were those sort of relieved?

13 A. A little bit, yes.

14 Q. How long were you at the park?

15 A. Not long. I don't recall. Maybe half an hour,
16 45 minutes.

17 Q. And I apologize if I already asked this, but I just want
18 to be sure on the timeline. About when is this happening? Did
19 you say early 2014?

20 A. Uh-huh, yes.

21 Q. Where did you go from Del Rio?

22 A. We went to Eldorado.

23 Q. And is that where you had some relatives living?

24 A. I had a brother living there.

25 Q. How long did you stay in Eldorado?

1 A. We just visited and then we came to San Angelo.

2 Q. And, again, felt comfortable enough that you weren't
3 being pursued, and you stopped in Eldorado; is that right?

4 A. Yes. We stopped to see my brother.

5 Q. Where did you go from Eldorado?

6 A. To San Angelo, to the place we have, the place we have
7 there.

8 Q. And that's the residence that you had been staying at for
9 some time?

10 A. Yes.

11 Q. How long had you been staying there prior to when you
12 brought Mr. Marin-Pina there?

13 A. Less than a year.

14 Q. Less than a year?

15 A. Uh-huh.

16 Q. You stated that you didn't put the trailer in your name;
17 is that correct?

18 A. Yes.

19 Q. Why is that again?

20 A. To not be able to be found, not--so people wouldn't know
21 that we were living there or staying there.

22 Q. So that people who were to look in, I guess, wherever
23 that information might be found, they wouldn't be able to find
24 your name?

25 A. Right.

1 Q. Or your children's names?

2 A. Yes.

3 Q. Same reason you didn't put them in school; is that
4 correct?

5 A. They were in school for a little bit; then I pulled them
6 out.

7 Q. So they were actually registered for school?

8 A. Yeah, they finished--they--they didn't--they went for a
9 little bit to Grape Creek Middle School; then I--I pulled them
10 out.

11 Q. Why did you pull them out?

12 A. For fear that they might--they might--somebody from there
13 might come here and see them in the newspaper or, you know,
14 field trips and all that stuff.

15 Q. Did you tell the school administrators at Grape Creek
16 that's why you were removing your children from school?

17 A. No, I didn't tell them that.

18 Q. Did there come several occasions where law enforcement
19 were actually called out to your residence at 9869 Possum
20 Hollow?

21 A. Yes.

22 Q. I'd like to first talk about December the 25th of 2014.
23 Do you recall law enforcement having to be called out on that
24 day?

25 A. Yes.

1 Q. That's Christmas Day; is that correct?

2 A. Yes.

3 Q. I don't want to go into the substance of what happened,
4 but I want to talk about who was there.

5 A. Yes.

6 Q. Did you, yourself, have to call the Tom Green County
7 Sheriff's Office?

8 A. I called them, yes.

9 Q. And I say called the sheriff's office. Did you call the
10 sheriff's office directly, or was it a 9-1-1 call?

11 A. I don't remember. I had gotten home, and I don't
12 remember if it was the sheriff--well, they both go to the
13 sheriff's. I don't know. I don't remember.

14 Q. And that was a bad question. What I'm trying to ask is,
15 sometimes you call 9-1-1 and then they'll just dispatch the
16 appropriate law enforcement for that area. Did you call the
17 Tom Green County Sheriff's Office--

18 A. Yes.

19 Q. --at a direct number, or did you just dial 9-1-1 and they
20 dispatched--

21 A. I believe I called 9-1-1. I didn't know the sheriff's
22 number.

23 Q. Okay. And that's what I meant to ask--

24 A. Right, yes.

25 Q. --was whether you just dialed 9-1-1 or you actually knew

1 the sheriff's office number.

2 A. Yes.

3 Q. Okay. So you dialed 9-1-1 on December 25th, 2014. And
4 again, not going to the substance of what happened, but was
5 your husband there at the residence with you--

6 A. Yes.

7 Q. --when you dialed 9-1-1?

8 And when-- Did officers, at some point, arrive?

9 A. Yes.

10 Q. And was that in the evening hours of December 25th, 2014,
11 or do you recall?

12 A. It was in the evening. My parents were in town, and they
13 went--had gone back home.

14 Q. Did the sheriff's office actually send some deputies out
15 to the residence?

16 A. Yes.

17 Q. And when they arrived, was yourself, the defendant
18 Mr. Marin-Pina, and the deputies there present at your
19 residence?

20 A. Yes. Yes.

21 Q. Would this have been before or after you had your
22 children removed from the Grape Creek school system?

23 A. That was after.

24 Q. Did you give those law enforcement officers your real
25 name?

1 A. Yes.

2 Q. Did you also give them the defendant's name, or did he
3 give them his name, or do you recall?

4 A. I don't remember if he did. I know I gave them my
5 information.

6 Q. Did you also give them the information of your children?

7 A. I don't remember.

8 Q. If that information is in the reports, would that
9 information have come from you?

10 A. Yes, most likely.

11 Q. So at some point, you did give your information to law
12 enforcement agents in Tom Green County. Is that a fair
13 statement?

14 A. Yes.

15 Q. Did you feel threatened by the Tom Green County sheriff's
16 deputies that arrived on scene to help?

17 A. No.

18 Q. Are you aware if Mr. Marin-Pina felt threatened by those
19 deputies who arrived on scene?

20 A. I don't--I don't think so. It was just a call so I could
21 go in the house and get some clothes, because we were having an
22 argument and I wanted some clothes to go back to my brother's
23 house because my parents were visiting, so--

24 Q. Yes, ma'am. And again, I don't want to get too much into
25 the substance of any conflict that was there--

1 A. Right, uh-huh.

2 Q. --but I do want to ask, at any point, did you tell these
3 sheriff's office deputies that you had come to San Angelo
4 because of fear of being pursued by the cartel in Mexico?

5 A. No.

6 Q. Are you aware if Mr. Marin-Pina told the deputies that
7 information?

8 A. I'm not aware of that.

9 Q. Was there also an occasion on January the 19th, 2015,
10 where sheriff's deputies were called out to your residence
11 again?

12 A. Yes.

13 Q. And was that call-out actually made by an individual by
14 the name of Sheila Pardue?

15 A. I'm sorry?

16 Q. Sheila Pardue, is she the one who made the call, or did
17 you make the call?

18 A. I believe she did. She's a neighbor--

19 Q. Okay. So who is that to you? Who is Sheila Pardue?

20 A. She lives, let's see, about two, three houses away from
21 where I live.

22 Q. So she lived in the neighborhood near your trailer?

23 A. Yes, she does.

24 Q. But she's actually the one who called the officers on
25 that date; is that correct?

1 **A.** Yes, I believe so.

2 **Q.** And on January 19th, 2015, did deputies again arrive at
3 your residence on Possum Hollow?

4 **A.** Yes.

5 **Q.** And without going into any substance of any conflict or
6 anything, I want to ask, by the time that deputies arrived at
7 the residence, was Mr. Marin-Pina still at the residence?

8 **A.** Yes.

9 **Q.** He was?

10 **A.** He was.

11 **Q.** You believe he was there and did visit with deputies?

12 **A.** I believe so. I don't remember exactly the whole--the
13 details, but I believe he was there.

14 **Q.** Okay. Were you there when deputies arrived to the
15 residence?

16 **A.** I believe I talked to one of them.

17 **Q.** Okay. And again, similar question to what happened in
18 December. Did you tell those deputies at that time that you
19 were running in fear from the cartel in Mexico?

20 **A.** No.

21 **Q.** If Mr. Marin-Pina was present, do you have any knowledge
22 about whether he would have told deputies that on that date?

23 **A.** I don't know.

24 **Q.** A similar incident occurred on April the 7th, 2015. Did
25 you, yourself, have to call out emergency services to the

1 residence?

2 A. Yes, I believe so.

3 Q. And by "emergency services," I mean to say law
4 enforcement. Did law enforcement get called out to your
5 residence again?

6 A. Yes.

7 Q. And this is on April the 7th of 2015; is that correct?

8 A. Yes.

9 Q. In that situation, were you present when law enforcement
10 officers arrived?

11 A. Yes.

12 Q. Was your husband, Rafael Marin-Pina, present also?

13 A. I believe so.

14 Q. And same question. Not going into the substance of any
15 conflict or dispute, did either of you tell law enforcement
16 officers that you were running in fear of being pursued by the
17 cartel?

18 A. No.

19 Q. I'd like to turn to May 16 of 2015. Were law enforcement
20 officers from the Tom Green County Sheriff's Office again
21 dispatched to your location there at 9869 Possum Hollow?

22 A. In May, you said?

23 Q. May 16th of 2015.

24 A. I don't recall dates, but I suppose so, yes.

25 Q. Okay. Any reason to dispute that they were called out to

1 your residence on May 16th, 2015?

2 A. I'm sorry. Can you repeat that?

3 Q. Do you have any reason to disagree with the fact they
4 were called out to your residence on that date?

5 A. No.

6 Q. Any reason to believe that didn't happen?

7 A. No, I don't.

8 Q. On that occasion, do you recall whether Mr. Marin-Pina
9 was there when officers arrived?

10 A. I believe he was there.

11 Q. Were there occasions when you would call the police and
12 Mr. Marin-Pina would leave before they would arrive?

13 A. Leave?

14 Q. Yes, ma'am, that he would not be present at the scene
15 after you had contacted law enforcement?

16 A. Well, I didn't call the police all those times, that's--
17 that's for sure. I remember one time he wasn't there, but no,
18 the other times, I remember he was--he--he had spoken to them
19 too.

20 Q. Okay. And even assuming he was there on May 16th of
21 2015, do you have any information that he told law enforcement
22 that he had been pursued by the cartel and that's why he was in
23 San Angelo, Texas, or Grape Creek, Texas?

24 A. I don't think he did. I don't know. I--

25 Q. Did you mention that to law enforcement officers?

1 **A.** Did I mention that?

2 **Q.** Yes, ma'am.

3 **A.** No.

4 **Q.** And this is now multiple times that you have called for
5 service from the sheriff's office. Did you have any reason to
6 believe that they weren't trustworthy or would not have handled
7 that type of information properly?

8 **A.** I think they're trustworthy. I don't--I really didn't
9 tell anybody about the situation. Nobody really knew about
10 what--why we came here or that he was here illegally. So I
11 didn't see a reason to tell them.

12 **Q.** Did you have any reason to believe that those sheriff's
13 deputies were affiliated with the cartel?

14 **A.** No.

15 **Q.** And again, you also shared your personal information and
16 the information of your children; is that right?

17 **A.** Yes.

18 **Q.** I'd like to turn lastly to September the 13th of 2015.
19 Is that the last occasion that you can recall that sheriff's
20 deputies were dispatched to your residence on Possum Hollow?

21 **A.** Yes.

22 **Q.** And on September 13th of 2015--again, not going into the
23 underlying substance of any conflict or disagreements--was
24 Mr. Marin-Pina and yourself present when those deputies
25 arrived?

1 **A.** Yes.

2 **Q.** Did you visit with deputies on that occasion?

3 **A.** Yes.

4 **Q.** Did Mr. Marin-Pina visit with deputies on that occasion?

5 **A.** Yes.

6 **Q.** And same question. Did either of you tell those deputies
7 that you were running from the cartel for fear of your life?

8 **A.** I didn't, no.

9 **Q.** I want to talk specifically about September the 13th of
10 2015. Again, I don't want to go into the specifics of what
11 happened, but was part of the issue that Mr. Marin-Pina had
12 disappeared from the residence for several days and had just
13 returned?

14 **A.** He was at the neighbor's house actually. He watches--we
15 used--he used to watch the neighbor's house, and he was there,
16 right--right next door.

17 **Q.** So if you would have told officers that your husband had
18 been gone for three days and that he had just come home that
19 day, is that what you meant? That he was just next door for
20 three days?

21 **A.** Yes. I told them he was next door. I don't remember if
22 he was gone for three days; I just told them that he had been
23 gone for the night and probably the day before that.

24 **Q.** Okay. If they documented that you said he had been gone
25 for three days, would you have any reason to dispute that?

1 **A.** I don't know if I have a reason. I--he might have been
2 there for three days. I don't--we were having an argument, so
3 he would--so he--he left. I don't remember exactly how long he
4 was gone.

5 **Q.** What was Mr. Marin-Pina doing--if you brought him over in
6 early 2014, up and through September of 2015, what was he doing
7 for employment?

8 **A.** He was working for the lay pastor in the church doing
9 remodeling; then he went on to working construction and
10 roofing.

11 **Q.** So he was employed while in the United States?

12 **A.** He was working, yes.

13 **Q.** Was he helping pay the rent?

14 **A.** Yes.

15 **Q.** At this point, where were you at in the application
16 process for his lawful admission into the United States?

17 **A.** Can you repeat that, please?

18 **Q.** Now that he's present in San Angelo and working, were you
19 still attempting to allow him to lawfully reapply for admission
20 to the United States?

21 **A.** Yes. I had filled out different applications, because
22 the one that I was planning to submit when he was in Mexico
23 can't be submitted from the--when he's in the United States.
24 So I was looking and doing research on the application that can
25 be filed from here while he's living here.

1 Q. So it was actually impossible for you to file that
2 application while he was illegally present in the
3 United States?

4 A. Right. You have to do it from outside the country.

5 Q. And that's all information that you had researched, and
6 it was available to you; is that correct?

7 A. Yes.

8 Q. That was before you developed the plan to get a residence
9 in San Angelo and then help your husband come across the border
10 and then live in the United States?

11 A. Yes.

12 MR. LONG: Pass the witness, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. SLOAN:

15 Q. Bibiana?

16 A. Yes.

17 Q. On cross-examination, you talked about dates that things
18 happened, 2013, 2014, 2015, things like that. And I just want
19 to ask you, are you nervous today?

20 A. Yes, very much.

21 Q. Okay. So when you said that, in 2015, that you were
22 receiving threats, that wasn't accurate, was it?

23 A. Oh, no.

24 Q. Okay. So do you have some--do you have some trouble
25 remembering the dates exactly in terms of getting that right?

1 A. Yes, I do.

2 Q. Okay. When you were living in the Yucatan-- On
3 cross-examination, you talked about how easy it was to travel
4 back and forth in Yucatan. When you were in Yucatan, had
5 anybody, at that point, accused your husband of being in the
6 DEA?

7 A. In Yucatan?

8 Q. In Yucatan.

9 A. Not that I know of.

10 Q. Okay. You, at one point, indicated that you thought
11 there was a way to get your husband into this country legally
12 if you stayed in Mexico. Did it stay safe in Mexico where you
13 felt like you could go through that process?

14 A. It didn't stay safe, no.

15 Q. Other than the danger that you felt you were in, was
16 there any other reason to leave Mexico?

17 A. Other than danger?

18 Q. Right.

19 A. I think I would have stayed in Mexico if there weren't
20 any shootings, if there weren't any threats.

21 Q. So if the threats hadn't been made, you wouldn't have
22 left Mexico?

23 A. No.

24 Q. Okay. Mr. Long talked about getting a residence in
25 San Angelo and planning for him to come across. When you

1 originally got that residence in San Angelo, was your plan to
2 bring him across legally?

3 A. Illegally?

4 Q. Legally.

5 A. Legally, yes.

6 Q. All right. And you had started some petitions trying to
7 save up the money for the filing fee and things like that?

8 A. Yes, yes.

9 Q. Okay. And Mr. Long asked you about issues coming back,
10 and you indicated you didn't have any issues coming back from
11 Mexico into the United States?

12 A. No.

13 Q. There was one occasion when you--when these guys came up
14 and attacked your vehicle; is that right?

15 A. Well, that was when I was bringing the kids to school,
16 yes.

17 Q. Okay. Your parents are lawful permanent residents in the
18 United States?

19 A. Yes.

20 Q. At the time that you came back and brought Rafael back,
21 did you have a place in Mexico other than where you were
22 living, like family you could go and live with where you would
23 be safe?

24 A. No, we don't have a house in--we didn't have anything--
25 anywhere else to go in Mexico. Besides, we didn't have the

1 money to move and start renting a place.

2 Q. When you called the Tom Green Sheriff's Office out--or
3 when they got called out to your house, were they respectful
4 with you?

5 A. Very respectful, yes.

6 Q. Did they always treat you in a respectful and a good way?

7 A. Yes.

8 Q. Did you have any fear of calling them out? I mean, they
9 were good officers; is that right?

10 A. They were good officers. They have been called three
11 times in the past month and a half. Somebody else keeps
12 calling the police, and they have always been respectful. Two
13 days ago was the last time somebody called them.

14 Q. And so as far as when Mr. Marin was there versus when
15 they came or when they didn't come, do you remember exactly
16 which days he was there when they came and which days he
17 wasn't?

18 A. I remember one situation when he wasn't there. I don't--
19 I don't--I can't tell you which time. I don't remember
20 exactly.

21 Q. Okay. So there--

22 A. I know that December the--December 25th, he was there,
23 because--

24 Q. Okay. So there were some times when he was there and
25 some times when he wasn't?

1 A. Yes.

2 Q. Okay.

3 MR. SLOAN: I'll pass the witness.

4 THE COURT: All right. You may step down.

5 Call your next witness.

6 MR. SLOAN: Your Honor, we would call Rafael
7 Marin-Pina.

8 THE COURT: Raise your right hand.

9 (THE OATH IS ADMINISTERED BY THE COURT)

10 THE COURT: Please be seated.

11 RAFAEL MARIN-PINA,

12 DEFENSE WITNESS, TESTIFIED ON HIS OATH AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MR. SLOAN:

15 Q. Could you state your name for the Court?

16 A. Rafael Antonio Marin-Pina.

17 Q. Okay. And you are the defendant in this case. Right?

18 A. Yes, sir.

19 Q. How old are you, sir?

20 A. Forty-one.

21 Q. I'm sorry. How old?

22 A. Forty-one.

23 Q. Forty-one?

24 Where were you born?

25 A. Mexico City.

- 1 Q. Are your parents U.S. citizens right now?
- 2 A. Yes, sir.
- 3 Q. Were they U.S. citizens when you were born?
- 4 A. When I was born?
- 5 Q. When you were born, were they U.S. citizens?
- 6 A. Oh, no. No.
- 7 Q. When did they become naturalized U.S. citizens?
- 8 A. In mid-nineties, I want to say.
- 9 Q. How old were you when you first came to the
- 10 United States?
- 11 A. Too young to remember.
- 12 Q. Okay. If your A-file says you came across--or came in
- 13 1978, would that have made you three years old?
- 14 A. About.
- 15 Q. Where did you go to elementary school?
- 16 A. Russell Elementary in Santa Ana, California.
- 17 Q. Where did you go to middle school?
- 18 A. Fitz--Fitz Intermediate in--also in Santa Ana,
- 19 California.
- 20 Q. What about high school?
- 21 A. I went to Los Amigos High School in Fountain Valley,
- 22 California.
- 23 Q. Did you graduate high school?
- 24 A. Yes, sir.
- 25 Q. Did you do any college?

1 A. Yes, sir.

2 Q. All right. About how much college did you do?

3 A. About--almost two years, like a semester and a half.

4 Q. Okay.

5 A. Like a year--three semesters. Like a year and a half of
6 school.

7 Q. And did you, at some point, join the United States Marine
8 Corps?

9 A. Yes, sir.

10 Q. When was that?

11 A. After the first semester of college. I was getting bad
12 grades, and so I figured I wasn't smart enough for college yet,
13 so I joined the military.

14 Q. Okay. And how long were you in the Marines?

15 A. About two years.

16 Q. All right. And what happened? How did you wind up
17 getting out of the Marines?

18 A. I had a motorcycle accident, a severe motorcycle accident
19 where I broke, like, 42 bones in my body. I was in a coma,
20 wheelchairs, and stuff like that. But that's how I was
21 discharged out of the Marines.

22 Q. Okay. Did they determine you weren't combat-ready and so
23 they had to let you go?

24 A. Yes.

25 Q. Was part of the reason you joined the Marines--was that

1 to try to get your citizenship?

2 A. Yes, that was part of the enlistment incentive, the fast
3 track to citizenship, and also the GI bill for college.

4 Q. Right. And the citizenship part, that application never
5 got--never got submitted, did it?

6 A. I did submit it. I did.

7 Q. You did try to start it?

8 A. Yes.

9 Q. Did you--and you tried to start that through your
10 military situation?

11 A. In the military.

12 Q. Okay.

13 A. We have to in order to join the military.

14 Q. All right. In 1996, did you get convicted of an
15 aggravated battery?

16 A. It was 1997, I believe. I caught the charge in '96; it
17 didn't go to trial until '97.

18 Q. All right. So you were convicted of that offense; is
19 that right?

20 A. Yes, sir.

21 Q. Were you later deported from the United States due to
22 that conviction in 1999?

23 A. Yes.

24 Q. When you first went--when you were first deported in 1990
25 to Mexico--1999 to Mexico, how did things go?

1 **A.** Not too good. I mean, it was fun for a while, because I
2 was young and single, and it--but it--I took it as a vacation
3 almost, but it's really hard to acclimate to a foreign country
4 that you're--you're not familiar with the culture. But I did
5 try and make it over there, but it's--

6 **Q.** All right. So you--

7 **A.** It wasn't going to happen. Back then, I didn't speak
8 that much Spanish.

9 **Q.** Did you have some back and forth between the
10 United States and Mexico over the years?

11 **A.** Yes.

12 **Q.** All right. And in 2008, you were deported; is that
13 right?

14 **A.** Yes, because--

15 **Q.** And in 2008, were you already married?

16 **A.** Yes.

17 **Q.** And how many of your kids did you already have?

18 **A.** Four.

19 **Q.** Okay. What did--how did you-- Did you determine that
20 something different was going to happen this time in Mexico?

21 **A.** My wife and I, we-- See, I was deported in 2008 because
22 I caught a DUI, and--

23 **Q.** Okay. Did you determine that you were going to change
24 things this time in Mexico?

25 **A.** Yeah. Yeah, I quit drinking and got--got spiritual. I

1 was saved and went to church and worked on my marriage and on
2 my addiction to alcohol, and my family actually came--was--came
3 to live with me in Mexico. And I got further education--

4 Q. Where did you live first?

5 A. Yucatan.

6 Q. And did you have some kind of problems in Yucatan?

7 A. Not real problems. Money problems, but those--those are
8 everywhere.

9 Q. Okay. At some point, did you decide to move to Del Rio--
10 I mean, I'm sorry, to Acuna?

11 A. Yes.

12 Q. Okay. Why did you decide to move to Acuna?

13 A. Because my--my kids and my wife, we all went to live in
14 Yucatan, but my kids were being called dumb and slow and--and
15 that was by the teachers, because they couldn't read in
16 Spanish. And it's--you know, my kids are--they don't speak
17 Spanish at all. And so they actually knocked them down a
18 grade. Like in California, my kids were actually going to go
19 up a grade, and then they came to live in Mexico and they got--
20 they went into the grade they were--they should have been at,
21 and they said these kids are too stupid; we're going to knock
22 them down a grade. And so they knocked them down a grade, my
23 son and my oldest daughter.

24 Q. All right. Did you decide they would do better in
25 American schools?

1 A. Yes.

2 Q. And are there-- Is Acuna a border town?

3 A. Yes.

4 Q. Was commuting into Acuna--or into Del Rio for school part

5 of why you went to Acuna?

6 A. Later down the road, yes. But that didn't happen

7 immediately.

8 Q. Okay. When you moved to Acuna, where was the first place

9 you lived?

10 A. As my wife stated, in what's called Los Altos

11 (phonetically), The Heights.

12 Q. Is that a fairly nice neighborhood?

13 A. It's new. It's new houses, newer houses, paved roads. I

14 mean, for a third-world country, a newer house with a paved

15 road, that's--yeah, that's nice, I guess.

16 Q. Okay. Did you begin to hear some rumors about yourself?

17 A. Not in that neighborhood. It wasn't until we moved.

18 Q. So you moved out of what you called Los Altos--

19 A. Los Altos.

20 Q. --and you moved to a different place?

21 A. Yes.

22 Q. All right. And what were the rumors you were hearing?

23 A. In the new neighborhood, in the--what'd she call--Colonia

24 Gammas (phonetically), it's that I was a federal agent.

25 Q. Where did you first hear that?

1 **A.** At the local store, at the little general store,
2 mom-and-pop-type store.

3 **Q.** Who told you that?

4 **A.** The owners of the store.

5 **Q.** They told you they thought you were a federal agent?

6 **A.** No. They told me to beware of certain men because
7 they're asking questions about me.

8 **Q.** Okay. By "certain men," who did they--who were they
9 talking about?

10 **A.** Suspected members of the cartel.

11 **Q.** Did they tell you what kind of questions they were asking
12 about?

13 **A.** Yes, what I--who I--who was I; what I do, like, for a
14 living; and if they knew anything about me. And those people
15 back then, they--they thought we were missionaries, but we
16 weren't.

17 **Q.** Okay. At some point, did your house get busted into?

18 **A.** Yes.

19 **Q.** How did you--how did you discover that?

20 **A.** Just--just to look. I mean, you--things are turned
21 about, things are out of place, things aren't put away where
22 they're supposed to. We had suitcases with just clothes, and
23 they were opened and looked like they were gone through.

24 **Q.** Okay. Did you have an encounter with some of these men?

25 **A.** Yes.

1 Q. When did that happen?

2 A. I want to say it was 2013.

3 Q. Okay. I don't mean the year. I mean, what was the
4 circumstances? Were you working, or--?

5 A. Oh, no. One of those days that's just-- What I would do
6 is buy the morning paper, look for the jobs, because I wanted
7 to stay--I wanted to keep teaching, because I earned a teaching
8 credential when I was in Yucatan, and I wanted to keep
9 teaching. But all they had in Acuna is factory work, which is
10 the work my wife does if--when she got--

11 Q. Okay. (Speaking Spanish), that's the word?

12 A. Yeah, (speaking Spanish) is--that means factory, but it's
13 an American factory, so it's--that's the only kind of work
14 there was. But I wanted to keep teaching, so I presented
15 basically a--my basic English 101, presented it to the general
16 managers at the (speaking Spanish), and I wanted to teach their
17 employees so that they can better communicate, and that's what
18 I was trying to do, is establish a teaching job.

19 Q. Okay. So how did--what were the circumstances under
20 which you had an encounter with these people you suspected to
21 be in the cartel?

22 A. Well, after one of those interviews, I dressed, you know,
23 not fancy, but like you-all, but--like this, like I am now.
24 And, you know, coming back from an interview, and so they see
25 me like this, and then they see me duck into my little house

1 and come out in just regular jeans and T-shirt. And so back
2 then, I used to smoke, and I was having a cigarette, and two of
3 those guys, they called me over, and--and I thought they were,
4 like, concrete workers or something, because they called me--
5 they were standing in front of a house that's not finished.

6 And so I went over there, and they just started
7 talking and saying, hey, what are you doing? What are you up
8 to?

9 And I just tell them I was just looking for work,
10 you know.

11 **Q.** Okay. So what happened next?

12 **A.** And that's when one of those black SUVs pulled up. Two
13 other men came out of those and they said, get him in the
14 house.

15 And that's when I was, like, what's going on?

16 And they take me into the house and they--then
17 those guys asked me--the guys that have guns in their
18 waistbands--who do I work for.

19 And I am telling them, I don't have a job. I'm
20 trying to get work.

21 You know, I thought these were just bullies that
22 want free money or trying to rob me. I said, I don't have
23 money. I don't work for nobody.

24 I didn't catch on until they started asking more
25 questions, specific questions.

1 Q. Okay. What more questions did they ask you?

2 A. They--if I was part of the--in Spanish, they pronounce--
3 they don't pronounce D-E-A the way we do; they just pronounce
4 it--they read it and they say if I was--they asked me if I was
5 part of the Dea.

6 And I was, like, Dea? What the heck is Dea? And I
7 didn't--it didn't--I didn't put two and two together until I
8 was, like, wait a second, these guys got the wrong guy.

9 And they said if I was--and then when they asked me
10 if I was FBI, and then--FBI, they did break it down into the
11 letters, (speaking Spanish).

12 And I was, like, oh, no. I was--no, you got the
13 wrong guy, man. That's not me.

14 Q. Did they have you do anything?

15 A. Yeah.

16 Q. What?

17 A. They had me take my shirt off. They said (speaking
18 Spanish). One guy gave the order to the others. (Speaking
19 Spanish) means to get me naked, and that's when I said these
20 guys were serious trouble. And they--supposedly I was wearing
21 a mike.

22 Q. Did they say something about you having a microphone or a
23 wire?

24 A. Yeah.

25 Q. Okay. So did you take off your shirt for them?

1 **A.** They took it off. They took it off. I was, like, hey,
2 hold on, just hold--slow down a minute.

3 By then, they were ripping my clothes off and they
4 were, like, (speaking Spanish). They were, like, be still,
5 stupid.

6 You know, now they're--now I know it's hostile.

7 **Q.** Okay. After they had your shirt off, what happened?

8 **A.** They looked at me and then they turned me around, and I
9 have the Marine Corps emblem right here, which kind of looks
10 like that eagle up there above the Exit sign, but it says USMC.
11 And they thought it was like some kind of federal emblem, like
12 that, and they said (speaking Spanish), meaning--pardon the
13 French--you know, hey stupid F, or--thought you said you
14 weren't a cop.

15 And I said, no, I'm not a cop. I'm not a cop.

16 **Q.** Okay. So they took the tattoo on your shoulder to mean
17 you were a policeman?

18 **A.** Yeah, they--they confused it with an agent type of
19 emblem, but it's just the United States Marine Corps emblem.

20 **Q.** Right. And what did they tell you?

21 **A.** They told me that they're going to kill me. They told
22 me--and that's when I came clean and I told them, you know
23 what? You guys got it wrong. I am not, in no--no way, an
24 agent. I'm actually a deported veteran. I'm deported.

25 Nobody in the neighborhood, in any neighborhood

1 that I had lived in in Mexico, I had confessed that to, because
2 it's kind of humiliating. But that's what I told those guys.
3 Man, I'm coming clean. I'm actually deported, man. I'm
4 opposite of police. I'm actually deported.

5 Q. What did they say?

6 A. They said to prove it. They said to prove it.

7 Q. Did they say something about plata?

8 A. They said to go to work for them. They said in order to
9 prove it to them, to go to work for them. And they say, plomo
10 or plata. And plomo is lead, plata is silver, meaning you
11 either work for us and prove it, or not, and then they kill
12 you. You either work for them and they pay you or you deny
13 them.

14 Q. Okay. So the payment is silver; the bullet is lead?

15 A. Yes. Those are your options. You either go to work for
16 them or you don't. Once they got their eyes set on you,
17 they're going to have you-- You know, and to them--they said,
18 what better guy to work for as in a, you know, marine. This
19 guy will get--he'll get our product across the border.

20 There's no way I'm going to get their product
21 across the border.

22 Q. Okay. Did they talk to you about your wife?

23 A. Yes.

24 Q. What did they say about her?

25 A. That she could do it, that--that--

1 Q. What did they know about your wife?

2 A. They knew her schedule to take the kids to school and
3 they knew her route.

4 Q. Did they talk about specifically how she was to go about
5 doing it?

6 A. Yes, in the car. They said for her--for us to drop off
7 her car at the car wash. They would just--the car wash, like--

8 Q. Okay. So you're supposed to drop your car off at the car
9 wash, then come pick it up and just run your regular schedule?

10 A. They said that they would (speaking Spanish), which means
11 fix, like rig it, and we wouldn't know what's in it or where it
12 was. And that's when I told them, my wife can't do that.

13 Q. Okay. Did you--I mean, what did you say about it to
14 them?

15 A. I told them, we can't do that. We serve a God that won't
16 allow us to do that. We cannot do that.

17 Q. Okay. Did they give you some time to think about it?

18 A. Yeah.

19 Q. Okay. How did that happen?

20 A. Well, when my--when I talked to my wife about it, she's,
21 like, you're crazy. Those guys are crazy.

22 I said, there's no way we can do this.

23 And she's saying we--"Just tell them no, you
24 can't--we can't do this. We can't, you know, get in trouble.
25 We're not going to support them," which I would never do.

1 Q. Okay. When you were-- After this happened, were you in
2 a situation where other things started to happen?

3 A. Yes. They began kind of harassing, annoying-type--it
4 wasn't--it was almost like they were just bothering us or
5 they--like--like their plans got spoiled in not--okay, guess
6 this guy is not going to be our drug mule. And they--that's
7 when they started slashing our tires and busting our windows,
8 like stupid things like that.

9 Q. Were they hanging around your house?

10 A. Breaking into our house, intimidating my wife, showing
11 off their guns, stuff like that.

12 Q. You say showing off their guns--

13 A. Yeah, like--like--like I know Mr. Felps has a sidearm,
14 and, you know, if he were to go like this (indicating), he--you
15 know, and say, I'm going to get you, like that's what they
16 would do. Or any one of these officers with a sidearm.

17 Q. Would they do that around your house?

18 A. Yes.

19 Q. Did they talk to you some more about making your wife run
20 this load?

21 A. Yes. My--the lady I rented from actually had come out
22 and yelled at them; older lady, probably in her--sixty-five,
23 somewhere around there. She said, leave these people alone,
24 they're good people, they're God-fearing people, leave them
25 alone.

1 But they weren't afraid of the locals. They
2 weren't afraid of the local law enforcement. But--

3 Q. Why do you think they weren't afraid of local law
4 enforcement?

5 A. They're on their payroll.

6 Q. Okay. Did you come to figure out which cartel these guys
7 belonged to?

8 A. Yes.

9 Q. What was that?

10 A. Zeta, with a "Z".

11 Q. Okay. And Zeta, that's just the letter Z in Spanish.
12 Right?

13 A. Yes.

14 Q. So the members of this--I mean, that's a regular known
15 cartel; is that right?

16 A. Yes. Yes, it's--

17 Q. Did your wife run into trouble with these folks?

18 A. Yes.

19 Q. And did she tell you about it?

20 A. Yes.

21 Q. Did that bother you?

22 A. Yes. It scared me.

23 Q. Okay. Was there an occasion where they made an attempt
24 on your life?

25 A. Yes. After everything that happened with my wife, and

1 she comes and stays--first, she stayed, like, a while in
2 Del Rio, Texas, but that didn't work out. She went a little
3 further up north to Eldorado, Texas, where her brother was.
4 But I stayed back, because I couldn't come across. But I--I
5 was staying with a friend from church. I stayed at their
6 house, which is actually--that address on my ID, that's the
7 address I was--that's the last address that I was at, because
8 those guys helped me to get that ID card. You know, they
9 said, well, get one of these IDs, you know; that will prove to
10 them that you're Mexican. You know, if they check you, they'll
11 know that you're legitimate Mexican, because this is a Mexican
12 ID.

13 So, you know, I went about doing things to be more
14 safe and precautions on my end. I moved--while she was in
15 the--on the American side and I had to stay on the Mexican
16 side, I moved to the--to stay with this guy from church, which
17 is that address.

18 Q. Would she come and visit you?

19 A. Yes.

20 Q. All right. What were you doing when this attempt on your
21 life occurred and how did it happen?

22 A. Well, I was left with one dog. Our two dogs were
23 American dogs. They had American pedigrees. But this German
24 Shepherd was actually a rescue that I found in the middle of
25 the desert, and I rescued it and I nurtured it and cured its

1 mange and--and that dog stayed with me and--the German
2 Shepherd, because we didn't have an American pedigree to bring
3 her across the border.

4 But that dog--on one occasion, I was walking it
5 down--just down the street. I was walking with that dog, and
6 when--all of a sudden I heard heavy motors, like big motors,
7 like big diesel truck motors revved up, and then I heard
8 gunshots.

9 Q. Okay. Did you turn and--

10 A. Multiple blasts.

11 Q. Did you turn and look?

12 A. I looked over my shoulder to see what was going on, and
13 it's just chaos. It's--it's a fire--a firefight. This was--
14 to me, it feels like a scene out of a combat movie, Urban
15 Combat. And then I just drug this dog to safety, and myself, I
16 ran to safety. And they tried to ambush me, but luckily for
17 me, they couldn't go down the road that I went because oncoming
18 traffic was coming in their direction. It was a one-way road.
19 And that's--

20 Q. Okay. You were on foot and they were in a vehicle?

21 A. Yes.

22 Q. So they were unable to follow you the way that you ran?

23 A. Yes.

24 Q. Do you have any doubt they were shooting in your
25 direction?

1 **A.** No, none.

2 **Q.** All right. Did you feel like they were specifically
3 targeting you?

4 **A.** Yes. The thing is, is that the GATE police in--that came
5 to Acuna is a federal police funded by the United States
6 government. It's not Mexican police. It's not your local
7 state cops, state trooper-type cops, or municipal police. The
8 GATE police--it's an acronym. It's for something in Spanish.
9 But the GATE police, they--they were SWAT, commando-style,
10 tactical-style police that was part of the war on drugs. And
11 these guys, they--they're so afraid of the cartels is that
12 they--they wear ski masks. These are cops that wear ski masks
13 to hide their identity from the cartels.

14 **Q.** Did you become associated in some way with these GATE
15 police?

16 **A.** No, no.

17 **Q.** I mean, in the--as far as the perception-- Did you
18 believe that the cartel thought you had put them on them?

19 **A.** That's what--they what they--that's why they put a hit on
20 my life. When they shot at me, it was because there was
21 already an order to kill me, thinking that I am the DEA agent
22 that snitched on them in Mexico to this GATE police that all of
23 a sudden wasn't there, and all of a sudden this guy that looks
24 like I look, speaks like I speak, all of a sudden this guy
25 comes and these tactical police show up and they start wiping

1 them out.

2 **Q.** Okay. So you have kind of a military appearance, and the
3 military shows up right after you do. Is that--

4 **A.** It's a--it's a special group. I don't know what the
5 acronym is for, but it's a special group. Not even--not even
6 the local cops, or even the state cops, know who these GATE
7 police are. And rumor has it that the GATE police is
8 actually--there's some American police or agent in that GATE
9 police, but I don't know. You folks would know better.

10 **Q.** After this--after the drive-by shooting--I'm going to
11 call it a drive-by.

12 **A.** Yes, it was.

13 **Q.** After the drive-by shooting, was that before or after
14 your wife wound up being blocked in after the skating rink?

15 **A.** That was after. The drive-by shooting was the last, and
16 I just told her to go. And then that's when she said, I'm not
17 going to leave you, I'm not going to leave you.

18 **Q.** Okay. So you told her to--

19 **A.** I told her to just never come back. I was telling her,
20 don't ever, ever come back. Don't ever come across the border.
21 Don't bring anybody--the kids back. I'll--I'll--I'll survive,
22 but I can't with you here.

23 And she says, we can't leave you. The kids need
24 you. You're their dad.

25 **Q.** Okay. So at some point, did she bring you across into

1 the States?

2 A. Yes.

3 Q. And were you--do you remain worried about this--what
4 happened in Mexico?

5 A. Yes.

6 Q. Even in the United States?

7 A. Yes, sir.

8 Q. Why?

9 A. Even more so, I mean, because the cartel members, they're
10 already on this side, and if anybody wants to deny it, then
11 they're fooling themselves. They're already on the American
12 side. They operate on both sides of the borders.

13 Q. Okay. This direction to kill you, I mean, you don't know
14 who made that order or how it happened, do you?

15 A. The Zeta cartel.

16 Q. Okay. Well, I mean, that's who tried to kill you.
17 Right?

18 A. Yes.

19 Q. Okay. And you believe it's because they think you're
20 some sort of a federal agent?

21 A. Yes.

22 Q. Okay.

23 A. And that's the thing about these cartels. The Gulf
24 cartel and the Zeta cartel, they're at war with each other.
25 But when it comes to killing the undercover federal DEA agent,

1 me--which I'm not, obviously--they come and they actually team
2 up, and then they put bounties on your head, and whoever kills
3 you and makes this gruesome video and posts it on social media,
4 they win. That's how sick these people are.

5 Q. All right. When you came across to the United States,
6 you said you continued to be concerned about what happened in
7 Mexico. Did you take some precautions to try to avoid being
8 identified?

9 A. Well, the thing is, is that I couldn't exactly legally go
10 to work. I couldn't exactly legally even drive. I couldn't
11 exactly legally pay my taxes. I couldn't exactly legally do
12 anything. So everything was done under--our house is in a
13 different name, our kids are out of school, my wife's car got
14 sold, she's--or we saved up enough money to get a car so that
15 we can sell her car, and she's having to drive me around like I
16 was part of her carpool, her, you know, just--I felt like the
17 giant kid.

18 And--and it's just stressful. It's hard to live in
19 fear. It's hard to live looking over your shoulder. Look over
20 my right shoulder, make sure the cops aren't going to chase me
21 because I'm an illegal alien. Even though I have an honorable
22 discharge from the United States Marine Corps, I'm an illegal
23 alien. And look over my left shoulder and who knows if there's
24 a cartel guy. I mean, it's hard to live that way.

25 Q. When you came across the border with your wife, did you

1 feel like you could stay in Mexico safely?

2 A. Not in that state. The state where that--Ciudad Acuna is
3 Coahuila, Mexico, not the United States. I mean, that's--it's
4 pretty bad. It was bad at the time that we were there. It was
5 at its peak, actually, the drug wars, and-- No, not there. I
6 don't think so.

7 Q. Did you feel like the threat of violence against you was
8 an imminent threat? It could happen anytime?

9 A. Yes.

10 Q. Did you feel like it was a present threat?

11 A. Yes.

12 Q. Did you feel like there was another option for you
13 besides leaving Mexico? Like seeking asylum?

14 A. No. Once I was targeted by the two cartels that are at
15 that border, there's no way. I can't even go back to
16 Michoacan, because the Pacific--there's another cartel there,
17 and then there's another cartel. You know, now, you can't,
18 because they bulletin you. They say, hey, we have pictures of
19 the DEA agent, the American DEA agent. This is his face. This
20 is his--hey, he's got a military tattoo all over his right
21 shoulder.

22 Those guys are going to--you know, they're always
23 going to find you, wherever you go.

24 MR. SLOAN: I'll pass the witness.

25

CROSS-EXAMINATION

BY MR. LONG:

Q. Mr. Marin, again, my name is Sean Long. I am the Assistant United States Attorney handling this proceeding. I'm going to ask a few questions, and if you don't understand my question, please let me know, and I'll be glad to rephrase it. Okay?

A. Yes, sir.

Q. When did you obtain your lawful permanent resident status in the United States?

A. I want to say, like, in the eighties through the Reagan Administration.

Q. And your testimony was that your parents had come over, I think Mr. Sloan said--

A. In the seventies.

Q. --in the late seventies?

A. Yeah.

Q. At that time, were they admitted as lawful permanent residents?

A. We came over with passports back then. I don't know. It's in the A-file.

Q. So at some point--here's what I want to ask. At some point, did you receive lawful permission to be in the United States as a lawfully admitted permanent resident?

A. Yes, sir.

1 Q. And that allowed you to go to the schools you discussed?

2 A. Yes, sir.

3 Q. Also allowed you to enroll in the college that you
4 discussed?

5 A. Yes.

6 Q. And that also allowed you to enroll in the military with
7 the Marine Corps?

8 A. Yes, sir.

9 Q. You mentioned there was a Fast Track To Citizenship
10 program. Was one of your motives in joining the Marine Corps
11 that you could get fast-track citizenship?

12 A. Yes, sir.

13 Q. So had you looked at other alternatives, and that would
14 be one of the ways you could get your citizenship?

15 A. Yes, sir.

16 Q. You said that-- What type of discharge did you receive
17 when you left the Marine Corps?

18 A. Honorable.

19 Q. Would it surprise you if it was listed as a general
20 discharge?

21 A. My--from active duty, it's a general discharge. No, it
22 wouldn't surprise me. That's what I told Immigration in '98 or
23 '97 when they first interviewed me. It's a general--

24 Q. So did you receive a general discharge or honorable?

25 A. General discharge, because at the time of my discharge, I

1 was broken into 42 different pieces. You know, I was banged up
2 from my accident.

3 Q. When was that accident?

4 A. In May of '95.

5 Q. So May of '95, how many years of service had you put in?

6 A. About a year and--year and a half.

7 Q. About 18 months?

8 A. Something like that.

9 Q. What was your tour required to be in order for you to be
10 eligible for that fast-track citizenship program?

11 A. I don't know if--the specifics, but I know that the
12 application process had already been initiated at that time.

13 Q. So you had initiated the application process that if you
14 would have successfully completed your tour, you would have
15 been eligible for that fast track to citizenship?

16 A. I believe so.

17 Q. But you weren't able to complete your tour; is that
18 correct?

19 A. I think, as far as eligibility, I was already eligible to
20 become a U.S. citizen, but the--the only difference between my
21 parents getting their citizenship and me getting my citizenship
22 is that I went in the military, so it takes months instead of
23 years. Back then, it was a lengthy process.

24 Q. So was it your--

25 A. But eligibility-wise, like you directed your question, I

1 think I was already eligible.

2 Q. So it was your understanding, even if you had gone
3 through the slow track like your parents, the process was still
4 available to you; it just might have taken a little bit longer
5 than the fast track would have?

6 A. Exactly.

7 Q. And you were, again, in the country lawfully, as a
8 lawfully admitted permanent resident?

9 A. Yes, sir.

10 Q. And we're talking about the mid-nineties; is that right?

11 A. Yes.

12 Q. So let's turn to-- You said you caught a charge in 1996.
13 Do you recall the exact description of that charge that you
14 were charged with?

15 A. Yes, the--

16 MR. SLOAN: Your Honor, if I could approach?

17 THE COURT: Yes.

18 -----

19 (AT THE BENCH)

20 MR. SLOAN: Your Honor, we discussed this prior to
21 the hearing, and we have a stipulation that it's an aggravated
22 battery. And I may not have asked him that on direct, but I
23 don't think he knows the legal description of the charge. This
24 is a charge that's a felony. He's subject to impeachment by
25 virtue of this felony. But going into the details of it is

1 beyond--beyond impeachment and beyond the nature of our
2 stipulation.

3 THE COURT: What's the point of going any further
4 than what we--

5 MR. LONG: I just want to-- It's listed as an
6 aggravated domestic battery. That's all--that's just the title
7 of the offense that's listed in his criminal history. I just
8 want to ask if that's what the charge was.

9 MR. SLOAN: Okay.

10 MR. LONG: It's important because--

11 THE COURT: I'll let you ask that question, but
12 don't go any further.

13 MR. LONG: Yes, sir.

14 MR. SLOAN: If I could have just a second to tell
15 my client.

16 THE COURT: All right.

17 -----

18 (PAUSE)

19 (IN OPEN COURT)

20 Q. (BY MR. LONG) Mr. Marin, I was just going to ask if you
21 were aware of what the offense was called. And so I would like
22 to ask, do you recall the offense that you were convicted of--
23 allegedly occurred in 1996; you were convicted in 1997--as
24 being called aggravated domestic battery? Does that sound
25 familiar?

1 A. Yes.

2 Q. Now, at that time, you were a lawfully admitted permanent
3 resident; isn't that correct?

4 A. Yes.

5 Q. But after sustaining that conviction, removal proceedings
6 were initiated against you; isn't that correct?

7 A. That's not correct.

8 Q. Okay. Well, then, tell us how it came to be, after you
9 were convicted of the crime, that you got into removal
10 proceedings.

11 A. Well, I--I pled to it at--released out of county jail,
12 but I had to waive any right to an appeal for a new trial, and
13 I was placed on probation.

14 Q. So you were--

15 A. I was released out of county after. After the judge and
16 jury found me guilty, I was released out of county.

17 Q. So after you were found guilty, you were given a
18 probation; is that correct?

19 A. Yes.

20 Q. What was your-- Let me ask, when you were given that
21 probation, were you allowed to keep your permanent resident
22 status--

23 A. Yes.

24 Q. --or was it revoked immediately?

25 A. I kept it.

1 Q. You kept it?

2 And so what happened that caused you to be removed?

3 A. I violated the probation, and then the Judge brought me
4 back to court and he says, well, now I kinda have to send you
5 to--sentence you to jail--to prison. And he sentenced me to
6 two years, but he gave me credit for the time that I had been
7 in--fighting the case.

8 Q. So was your probation revoked and you were finally
9 convicted of that aggravated domestic battery?

10 A. Yes.

11 Q. And is that when removal proceedings were initiated?

12 A. At--no, because I never had an ICE hold, so that's not
13 when. It's when I put in a petition to the California
14 Department of Corrections saying that, hey, guys, the Judge
15 struck the strike and he said it's not aggravated, and why are
16 you holding me? We're seven months over my release date.

17 And then they--then they put an ICE hold on me and
18 deported me, only after they had kept me wrongfully in prison
19 after seven months.

20 Q. At the time that you were sentenced to prison in
21 California, were you still just a lawfully admitted permanent
22 resident, or were you a naturalized United States citizen?

23 A. No, I was a permanent resident.

24 Q. So as a permanent resident, was it your understanding you
25 were subject to removal because of that conviction potentially?

1 **A.** It wasn't my understanding until after my--California
2 Department of Corrections realized that they had held me extra
3 time, and then they called Immigration and said, hey, let's
4 deport this guy. And that's when they deported me.

5 **Q.** So you believe the California Department of Corrections
6 had a role in your being deported in 1999?

7 **A.** Yes.

8 **Q.** Was it your understanding, from going through those
9 proceedings, that that conviction led to the revocation of your
10 permanent residency status?

11 **A.** I know my permanent residency status was when--was taken
12 when--after they released me from prison to Immigration
13 custody. Immigration said, hey, sign here; don't--don't--don't
14 fight this, and you could get immigration probation or you
15 could get deported, but we don't know.

16 And I just--and I signed it and I went into court
17 and they deported me. They didn't even ask about my schooling
18 like you just did, which I appreciate. They didn't ask about
19 my military service like you just did, which I appreciate.
20 They didn't ask about my discharge, which, at that time, was a
21 general discharge. But, see, this is where it gets funny.
22 They deport me in '99 and I get an honorable discharge in 2002.

23 MR. SLOAN: Your Honor, I'm going to object. This
24 is nonresponsive.

25 THE COURT: Overruled.

1 Q. (BY MR. LONG) It will make it easier if I ask a question
2 and you answer the question directly.

3 A. Okay.

4 Q. Let me back up just a little bit for timeline's sake.
5 From the time you had your injury--was that in '95, you said?

6 A. Yes.

7 Q. --until the time I'm going to say you committed the
8 offense, in 1996, during that time, did anyone initiate removal
9 proceedings to have your permanent residency revoked or remove
10 you from the country?

11 A. '96? No.

12 Q. '97, did they initiate proceedings to have you removed
13 from the country?

14 A. No.

15 Q. And like we have just discussed, that didn't happen until
16 1999?

17 A. Yes.

18 Q. And you feel that you were misled? Is that a proper
19 characterization? That you were misled into signing the
20 documents that led to your removal?

21 A. Well, I don't have a law degree. I don't even have any
22 type of degree. So, yes.

23 Q. You didn't understand that you were signing documents--

24 A. I didn't understand I was waiving my right to be in the
25 country that I served in the military and swore to defend, no.

1 I didn't know the United States did that to its military,
2 especially its Marines.

3 Q. Yes, sir. And let me ask you this question. You were
4 allowed to stay in the country after your military service;
5 isn't that correct?

6 A. After my military service?

7 Q. Yes, sir. Immediately following your discharge, general
8 or whatever, you were allowed to stay in the country as a
9 lawful permanent resident?

10 A. I was already a lawful permanent resident. What are you
11 talking about?

12 Q. I'm saying you weren't forced out of the country after
13 your military service--

14 A. I thought we were talking about the deportation. No,
15 not--

16 Q. We'll get there, sir.

17 You were allowed to stay in the country-- Was it
18 your understanding you could have followed the same track your
19 parents had followed as far as being a permanent resident
20 lawfully and then applying for naturalization, just as your
21 parents did?

22 A. Now you're--now you're losing me the same way you--you--

23 THE COURT: It's a simple question.

24 THE WITNESS: No, it's not that simple, sir.

25 THE COURT: Listen--

1 THE WITNESS: It's--I don't understand it.

2 THE COURT: It's a simple question.

3 Just ask the question one more time, and you're
4 going to answer it.

5 Q. (BY MR. LONG) When you discharged from the military, did
6 you have your permanent resident status still active? Were you
7 still lawfully in the country?

8 A. Yes.

9 Q. Was it your understanding you had the same availability
10 to apply for citizenship that your parents, in fact, used and
11 were naturalized?

12 A. When I was discharged?

13 Q. Yes.

14 A. Yes.

15 Q. You could have either potentially used the fast track--
16 maybe that was up in the air because of your discharge--

17 A. Okay.

18 Q. --but at least you could have applied the same way that
19 your parents applied. Is that your understanding?

20 A. Yes.

21 Q. But the difference in your situation and your parents' is
22 that you were subsequently convicted of an aggravated felony
23 and removed; is that correct?

24 A. Yes.

25 Q. So as far as treating service members, it wasn't because

1 of your service that you were removed; it was in spite of your
2 service and your subsequent conduct; is that correct?

3 A. Yes, yes.

4 Q. Were you actually removed from the country in 1999?

5 A. They told me to sign a paper, that voluntary return paper
6 or whatever it was, whatever it's called.

7 Q. And I'm not really concerned with what papers you had to
8 sign or anything. Were you physically returned at some point
9 to Mexico--

10 A. Yes.

11 Q. --immediately after you were ordered removed?

12 A. Yes.

13 Q. And Mr. Sloan had asked, had you gone back and forth from
14 the United States to Mexico several times between then and 2008
15 when you were most recently removed?

16 A. Yes.

17 Q. How would you normally come back across?

18 A. Walk across.

19 Q. Yes, how would you normally come back into--

20 A. Walk across.

21 Q. Yes, sir.

22 A. Yes. That's the answer. I'd walk across.

23 Q. You would walk across?

24 A. Yes.

25 Q. Different locations?

1 **A.** Mainly Tijuana port of entry.

2 **Q.** And is that in California?

3 **A.** California.

4 **Q.** You mentioned to Mr. Sloan that because you were in the
5 country illegally on this most recent occasion when you came
6 in, that you weren't able to legally do anything. You weren't
7 able to purchase cars and get work and things of that nature.

8 **A.** Yes.

9 **Q.** Were you able to function in the United States, even
10 being here illegally, from 1999--when you returned to the
11 country between 1999 and 2008?

12 **A.** Yes.

13 **Q.** You stated that you have four children that were all
14 United States citizens; is that correct?

15 **A.** Yes.

16 **Q.** So as far as those types of services, those were
17 available to you and your wife?

18 **A.** Yes.

19 **Q.** You said that you--I think the terms you used were
20 "caught a DUI" and that's why you were removed in 2008?

21 **A.** Yes.

22 **Q.** Is that correct?

23 **A.** Yes.

24 **Q.** So again, that was--was it that conduct that led you to
25 be in Immigration custody?

1 **A.** Yes.

2 **Q.** You stated before that, at that time-- Or let me ask for
3 clarification. You mentioned something about an addiction to
4 alcohol. Did you say that you were working on that after 2008?
5 Before 2008? Can you tell the jury what you meant by that?

6 **A.** I started going to--in Mexico, to the AA that they have
7 there that's similar to here, just in Spanish, and to going to
8 church, to my wife's church in Mexico.

9 **Q.** Where was your wife's church in Mexico?

10 **A.** It's--the denomination is--it's called--

11 **Q.** Let me pause. I'm not really concerned about the
12 denomination. Where was it-- Was this in Yucatan, or was
13 this--

14 **A.** Oh, in Yucatan. That's where I got rehabilitated was in
15 Yucatan. That's where I got my teaching credentials and that's
16 where I got spiritual and that's where I went to AA and got
17 rehab.

18 **Q.** So some of the incidents that led to some of your
19 problems with law enforcement in the United States, did you
20 feel you had addressed those?

21 **A.** Yes, I think. I don't know.

22 **Q.** You mentioned that when you got your Mexican voter
23 identification, that there were some individuals in Acuna who
24 helped you do that and let you use their residence as an
25 address; is that correct?

1 A. Uh-huh. A man from church.

2 Q. Did you have other--I mean, did you have people available
3 to you in the community that would help you with things like
4 that?

5 A. No, just him. Just one. One guy from church.

6 Q. But he allowed you to use his residence--

7 A. His water bill.

8 Q. --and his water bill--

9 A. And his residence.

10 Q. --and he allowed you to put your name with his residence
11 in Acuna?

12 A. No, he allowed me to put his water bill under my name for
13 his--for an address. You need--you need a permanent address to
14 get one of those voter registration cards, and obviously I
15 didn't have a permanent address in Acuna. But yes, he helped
16 me that way.

17 Q. So were you using--is it his address that appears on that
18 voter card?

19 A. That's his address, yes.

20 Q. Feel any issues with putting his address on the voter
21 card with the cartel after you?

22 A. No.

23 Q. At what point did your wife leave Acuna and start living
24 in San Angelo; do you recall?

25 A. No. I want to say it's toward the end of 2013 or early

1 2014. I don't recall the dates. I'm not good with dates.

2 Q. So the end of 2013 is about the time that she left--

3 A. That's what I'm thinking.

4 Q. --and I think she stated that it was sometime in early
5 2014 that you were smuggled across?

6 A. Yes, sir.

7 Q. So how many weekends would you approximate that she would
8 bring the kids down to visit you, as she testified?

9 A. As she testified, I can't say, because I don't remember
10 it being every weekend. I remember her staying with her
11 brothers and not being able to make it every weekend. But it
12 was months after she had come. It was--I recall it because I
13 recall it by--by the seasons. It wasn't winter when I came
14 across. It was close to Easter, springtime.

15 Q. So you think it was a little bit later in 2014 when you
16 came across?

17 A. Yeah. Yes, sir.

18 Q. Let's talk about some of these threats that you had
19 described for the jury. You mentioned that there was an
20 occasion where you were strip searched. Do you recall when
21 that happened?

22 A. No.

23 Q. Approximate time of the year or what year it was?

24 A. It was 2013.

25 Q. Think it was 2013?

1 A. Yes, sir.

2 Q. Early 2013? Late 2013?

3 A. I'd say probably February or March of 2013, is what I
4 would say.

5 Q. And so we'll say maybe early spring of 2013--

6 A. Yeah.

7 Q. --is when the strip search occurred; is that correct?

8 A. That's what I would say, yeah. Could have been later,
9 could have been--it could have been later, not sooner.

10 Q. And is that when you were first propositioned to be a
11 drug courier for the cartel to prove your, I guess,
12 allegiances?

13 A. Yes.

14 Q. And you told the jury you initially refused those
15 requests; is that right?

16 A. Yeah, first, I--yes, I did refuse.

17 Q. You stated there was also an attempt on your life and
18 that you believe that was done because they put out a hit on
19 you; is that correct?

20 A. Yes.

21 Q. Did people tell you they put out a hit on you, or that's
22 just what you gathered from the circumstances?

23 A. That's the message I got when I had to duck from bullets
24 to hitting my head, yes.

25 Q. Okay. So when they were shooting at you, you felt like

1 they--

2 **A.** I knew it was--I mean, I knew it was for real. It wasn't
3 intimidation fact or anything like that. It wasn't harassment
4 or annoyance anymore. It was real.

5 **Q.** Okay. And you say "harassment," and you mentioned that
6 after you refused to be a drug courier, that they--I think the
7 words you stated is that they started messing with you and
8 your family. Would that be the slashed tires and things like
9 that?

10 **A.** Harass, yeah. Yes.

11 **Q.** So when did the shooting occur, the attempted hit that
12 you described? When did that occur?

13 **A.** In 2014.

14 **Q.** Do you recall about what time of the year it was?

15 **A.** About this time of the year.

16 **Q.** Okay. So early 2014?

17 **A.** Yes.

18 **Q.** Would it have been during the time period that your wife
19 was traveling to and from San Angelo to Acuna to visit you on
20 weekends?

21 **A.** Yes. After that was the last time she came. That was
22 the last time.

23 **Q.** Okay. So--

24 **A.** That happened, that was it. That's when there was no
25 more hiding from these guys, where it was just time-- There

1 was no more let me look it up on the Internet, see what we can
2 file to get you legally across. At that time, that was, like,
3 when there was no--no other choice to--but to come across.

4 Q. So that incident occurred, and then your wife
5 subsequently came, and that was the trip that you left on?

6 A. Yes.

7 Q. So when that shooting occurred when you believe they shot
8 at you, where did you go? Did you go home? Go to the police
9 station? Where did you go?

10 A. To the man from church's house. His name is Bocha
11 (phonetically). He's just a guy that goes to church. That's
12 where I was staying. I didn't go back to the residence where
13 her and I lived with the kids, no, not by any means. No, I was
14 staying somewhere else.

15 Q. I believe she testified previously that when you left to
16 cross the border, that you left from your residence. Is that
17 correct or incorrect?

18 A. Where I was staying. My residence where I was staying.
19 Not our residence where we used to stay. This is a separate
20 address, separate house.

21 Q. So when she mentioned that you left your belongings there
22 at the residence, she meant the belongings that you would have
23 taken from the residence you had fled to go stay with your
24 friend?

25 A. When we abandoned that house, we abandoned the house, and

1 that went with what I could take to a friend's house from
2 church. And that's where I stayed and kept just indoors and
3 stayed basically hidden until we could figure out some way for
4 us to--

5 Q. So you did return to your previous residence to gather
6 some things before going to your friend's house--

7 A. No.

8 Q. --I believe is what you just stated.

9 A. No. No, those things were left. Those things are just
10 materialistic things. They're junk.

11 Q. I understand, sir, but I believe you just said that you
12 gathered some things from your residence--

13 A. When she left--

14 Q. --and took them to your friend's house.

15 A. --and I knew I had to leave, we couldn't stay at that
16 house, I took what I could, she took what she could, and we
17 abandoned the rest. And then I took up new residency, which is
18 that address that you have my ID on--that's on my ID, and
19 that's the residence that--my last residence.

20 Q. Did you have time to apply for that ID card, or is that
21 something that had already happened?

22 A. No, it takes--no, it takes time to apply for that ID
23 card. You go in and you show them your paperwork and your
24 birth certificate, and then they process it, take your picture;
25 then you come back later and pick it up.

1 Q. Let's talk about the residences just a little bit more.
2 How did your wife know to go to this alternate address of your
3 friend's house?

4 A. Oh, we were in communication. She had a phone.

5 Q. So you contacted her?

6 A. Oh, she knew where I was the whole time. When she left--

7 Q. And you-- Excuse me. And you informed her that it
8 wouldn't--did you inform her it wouldn't be safe for her to
9 return to your previous residence?

10 A. She knew.

11 Q. Because you were under such a threat and duress--

12 A. She knew, yes.

13 Q. --that you couldn't return to that residence?

14 A. Yes.

15 Q. But you still allowed her to bring herself and your
16 children back to Acuna?

17 A. Yes.

18 Q. So would you say it was hours, days, weeks that passed
19 from the time of the shooting to when you left out in that
20 late-model Nissan Pathfinder to cross the border? How long had
21 passed between the shooting and then your crossing of the
22 border? A few days?

23 A. It was months. No, months, months.

24 Q. Months?

25 A. Months.

1 Q. Okay.

2 A. I'd say it turned into months.

3 Q. So there were several months where you were still in
4 Mexico after the shooting, essentially figuring out how--

5 A. Yes. I was hiding. I hid at the friend's house. I
6 didn't come out no more, I stopped looking for work, and I just
7 stayed where I was.

8 Q. So you were in hiding for months. Did any other
9 shootings--

10 A. Not a lot of months. I'm saying month, month and a half,
11 two months at the most probably.

12 Q. Several days? Several weeks?

13 A. Yes.

14 Q. During those several weeks, what other threats or
15 incidents were occurring directed at you? Or were you in
16 hiding, staying--

17 A. I was in hiding. But what was going around me was that
18 GATE police was doing--doing their sweeps, their raids, their--
19 where they were just going to war with these cartel guys.

20 Q. And you believed that was related to you?

21 A. I have nothing to do with it. That's the whole--that's
22 the whole issue. They think that I had something to do with
23 it, but I had nothing to do with it. I'm not--I'm not
24 affiliated with DEA or with the Mexican federale police. I
25 have no ties with law enforcement.

- 1 Q. But you believe the Zetas and the gangs thought--
- 2 A. Those guys think that I'm an agent.
- 3 Q. When you crossed the border, your wife testified that she
- 4 doesn't recall you ever being directly questioned. Is that
- 5 your recollection as well?
- 6 A. When I crossed the border? What was--I can't--
- 7 Q. When you crossed the border with your wife, I believe she
- 8 stated--I don't want to misstate it. I think she said it was
- 9 sometime in early 2014. You said it was around maybe Easter
- 10 2014.
- 11 A. That's what I remember.
- 12 Q. Okay. When that occurred and you drove across the
- 13 border, did you ever have any direct interaction with
- 14 immigration officials?
- 15 A. No.
- 16 Q. Were there cartel or members of the cartel that you
- 17 suspected to be following you at that time?
- 18 A. No.
- 19 Q. When--approximately how long was it that you were still
- 20 in Mexico and your wife was having to essentially commute on
- 21 the weekends to see you? How long was that time period?
- 22 A. A few weeks.
- 23 Q. A few weeks?
- 24 A. Before she came back to see me?
- 25 Q. Yes.

1 A. After she had left? I--

2 Q. Well, when she got her residence in San Angelo and was
3 visiting you, how long was that time period between then and
4 when you were smuggled across?

5 A. It was--it was a couple weeks, maybe a few weeks.

6 Q. How did the cartel react to her no longer being or living
7 in Acuna?

8 A. I think that they think that that confirms their
9 suspicions.

10 Q. But they would have known--based on the detail you're
11 giving this jury about their knowing of your whereabouts, daily
12 procedures, they would have known that she left the residence.
13 Would that be a fair statement?

14 A. Yes.

15 Q. And after she left and kept coming back, did the cartel
16 ever capture your children or your wife?

17 A. No.

18 Q. Ever make any more specific threats to you of, hey, we
19 know your wife has left; you better get her back here?

20 A. No. Other than the shooting? No.

21 THE COURT: Counsel, we're going to take a
22 15-minute recess.

23 (RECESS TAKEN)

24 Q. (BY MR. LONG) Mr. Marin, I believe we were discussing
25 when you crossed the border. I think you stated it was maybe

1 around Easter of 2014. Does that sound about correct?

2 A. Yes.

3 Q. And I may have already asked, but I want to ask again,
4 when you crossed, do you recall where all the vehicle was
5 stopped by immigration officials? Was it just one time,
6 multiple times, or do you recall?

7 A. I don't recall.

8 Q. Do you know if it was stopped immediately at the border
9 from Acuna to Del Rio?

10 A. Yes.

11 Q. And that would be the actual border between the
12 United States and Mexico?

13 A. Yes.

14 Q. At that location, were you asked for your identification?

15 A. No, sir.

16 Q. Did you volunteer at that time that you were under duress
17 because of actions being taken by the Zetas cartel?

18 A. No.

19 Q. Did you hear your wife disclose that information to the
20 immigration officers questioning her about her documentation?

21 A. No.

22 Q. And do you recall ever being stopped at a subsequent
23 checkpoint past Del Rio, between Del Rio and Eldorado?

24 A. Yes.

25 Q. And would that also have been by immigration officials as

1 well?

2 A. Yes.

3 Q. Did yourself or your wife mention to those immigration
4 officials that you were fleeing, being pursued by the Zetas
5 cartel?

6 A. No.

7 Q. Do you also recall, as your wife did, that you did stop
8 at a park in Del Rio for just a moment?

9 A. Yes.

10 Q. And then you subsequently drove to Eldorado and then to
11 San Angelo?

12 A. Yes.

13 Q. Would this have been the first time you had visited the
14 location at 9869 Possum Hollow in Grape Creek?

15 A. Yes.

16 Q. And was that your residence for all intents and purposes
17 from the time you arrived in the United States up until you
18 were arrested on September the 16th, 2015?

19 A. Yes, sir.

20 Q. Or, excuse me, September 13th of 2015. I misstated that.

21 A. September 13th, yes.

22 Q. Yes, sir.

23 I won't go through each specific incident, but I do
24 want to mention the dates to ask if you recall whether you were
25 present on the scene when the Tom Green County Sheriff's

1 officers arrived at 9869 Possum Hollow.

2 The first date that was recorded that they were
3 dispatched was Christmas Day 2014. Do you recall sheriff's
4 deputies from Tom Green County Sheriff's Office being
5 dispatched to your residence?

6 A. Yes.

7 Q. Did you visit with those deputies on that date?

8 A. Yes.

9 Q. Did you tell them that you were fleeing for your life
10 from the Zetas cartel?

11 A. No, sir.

12 Q. Same question on January the 19th of 2015. Do you recall
13 sheriff's deputies being dispatched to your residence in Grape
14 Creek, Texas?

15 A. I don't recall, but yes.

16 Q. Is it possible they were dispatched to your location?

17 A. Yes, yes.

18 Q. And the main question I wanted to ask, at that time, did
19 you or your wife tell the sheriff's officers that were
20 dispatched to your house that you were fleeing threats of the
21 cartel?

22 A. No.

23 Q. Turning to April 7th, 2015, same question. Do you recall
24 being present when sheriff's deputies were dispatched to that
25 same location?

1 A. No.

2 Q. You don't recall being present when they were dispatched?

3 A. That one, I don't recall ever happening, but--but I don't
4 think I was there.

5 Q. Were there times when your wife would call sheriff's
6 deputies and you would leave the residence?

7 A. No. I would--no.

8 Q. You said no?

9 A. No. The times that I recall, I was there. I stayed
10 there. I spoke with the deputies, and they would say, well,
11 just be cool, really. There wasn't--that's all they would say
12 to me. And I'd say yes, sir, and they would leave.

13 Q. Okay. I'm having problems hearing you. If you could
14 speak up just a little bit.

15 A. I spoke--the times that I spoke to the deputies, I'm sure
16 it's in the report, and there was--all they would tell me is
17 to, like, you know, just don't fight, you know, don't--they
18 don't want to see nothing happening. That's it.

19 Q. And again, I don't want to get into the substance of any
20 actual conflicts you were having with--

21 A. Well, it wasn't a conflict. No, there wasn't conflicts.
22 There was just--it just--I relapsed, is what it was, and I'll
23 tell you the truth. I relapsed, and she didn't like it.

24 Q. What do you mean by "relapsed"?

25 A. I started drinking again.

1 Q. Let's turn to May 16th, 2015. Was that another
2 occasion--or are you aware that the sheriff's deputies were
3 called out to your residence on that occasion?

4 A. Yes.

5 Q. Did you interact with the sheriff's deputies on that
6 occasion?

7 A. I don't recall.

8 Q. Do you recall, if you would have interacted with them,
9 whether you would have told them about the threats that you had
10 received from the Zetas?

11 A. Yes.

12 Q. Did you tell them that?

13 A. No.

14 Q. September 13th of 2015, were you actually arrested by
15 deputies on that date?

16 A. Yes.

17 Q. And did you have interaction with those deputies on that
18 date as far as them asking you questions? Did you have
19 opportunity to visit with them?

20 A. Yes.

21 Q. And during any of those conversations, did you tell those
22 deputies that you were being persecuted by the Zetas cartel?

23 A. No.

24 Q. In fact, would you agree with me that your position with
25 regards to being prosecuted--or, excuse me, being persecuted by

1 the Zetas was initially first mentioned on October the 16th of
2 2015? That would have been the date that you were interviewed
3 by Agent Lonnie Felts.

4 A. Yes, sir.

5 Q. And that would have been after you were in Immigration
6 custody potentially looking at deportation. Would you agree?

7 A. Yes.

8 Q. You stated you had some fear that your family's vehicle
9 might be subject to being tampered with by the cartel; is that
10 correct?

11 A. Yes.

12 Q. Did you believe that threat persisted when they left
13 Acuna and were now living in San Angelo?

14 A. Yes.

15 Q. You believed your family was still in harm's way in
16 San Angelo, Texas?

17 A. Yes.

18 Q. In fact, you've testified that anybody who thinks that
19 the Zetas and the cartels are not present in the United States
20 is, I think you said, kidding themselves? Fooling themselves?

21 A. Yes.

22 Q. That's because you believe that the cartels have a very
23 strong presence in the United States. Would that be correct?

24 A. Yes.

25 Q. So much so that you felt like you shouldn't give your

1 information to the local schools or law enforcement; is that
2 correct?

3 A. Yes.

4 Q. But, in fact, you did give your personal information to
5 the law enforcement officers that responded to your residence
6 in San Angelo; isn't that correct?

7 A. On which date?

8 I did, yes.

9 Q. Did you give your personal information to the law
10 enforcement officers--

11 A. Yes, yes.

12 Q. --when they responded?

13 Because they couldn't have gotten it from
14 documentation, because you didn't have any; is that correct?

15 A. Yes.

16 Q. So if your correct name and date of birth appears in
17 those reports, that would be because you or your wife gave it
18 to them?

19 A. Yes.

20 Q. But again, you're testifying that you believe the threat
21 was still pending against your wife and children on all of
22 these dates because the Zetas and the cartel are so prevalent
23 and present in the United States; is that correct?

24 A. Yes.

25 Q. And, yet, at no point was that threat so imminent or

1 present or pending that you thought you should mention it to
2 these law enforcement officers?

3 A. I don't understand the question, sir. Can you give me
4 the--in another form?

5 Q. Yes, sir. You testified that the cartel is present in
6 the United States; isn't that correct?

7 A. Only my opinion, yes.

8 Q. In fact, to this day, would you say that you're still
9 under threat of a cartel?

10 A. Yes.

11 Q. But you didn't feel that threat was so imminent or
12 pressing that each time that these officers--these deputies
13 responded to your residence in San Angelo, Texas--at no point
14 did you ever mention to them, I've got this imminent fear of
15 threat from the Zetas in my residence here in San Angelo?

16 A. Correct.

17 Q. So it wasn't so pending or imminent that you mentioned it
18 to them?

19 A. Should I explain to you why?

20 Q. Did you mention it to them?

21 A. No, I didn't.

22 Q. What threats did you receive from the cartel while in the
23 United States?

24 A. None, sir.

25 Q. Did you ever file a report or anything related to those

1 incidents where you were threatened or purportedly assaulted by
2 the Zetas while in Acuna? Did you ever file any reports
3 related to that?

4 A. No.

5 Q. So you never reported that to any authorities?

6 A. No.

7 Q. Immigration or otherwise?

8 A. Correct.

9 Q. And you also previously testified--I believe you said
10 that you told your wife whenever you were telling her not to
11 come back to Mexico, that, "I'll be safe here without you," and
12 you told her to leave?

13 A. Uh-huh, yes.

14 Q. Did you believe that?

15 A. No.

16 Q. You didn't believe that you would be safe there without
17 her?

18 A. No.

19 Q. Even for the months and months that you had been in
20 hiding, or weeks and weeks that you had been in hiding?

21 A. No, I didn't believe it. I just wanted her to leave, to
22 come to safety.

23 Q. But ultimately, you left in the car, and she smuggled you
24 into the United States?

25 A. Yes.

1 Q. And that was pursuant to a plan and agreement you had
2 reached. Would that be a fair statement?

3 A. Yes.

4 MR. LONG: Pass the witness, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. SLOAN:

7 Q. Okay. The plan that Mr. Long mentioned about obtaining a
8 residence in the United States, what was the plan on how you
9 were going to come back when that residence was obtained?
10 Legally or illegally?

11 A. We tried legally.

12 Q. All right. So was the plan that you were going to secure
13 a residence, process whatever petitions had to be done, and
14 then come back?

15 A. Yes.

16 Q. All right. But did the plan change when the level of
17 danger changed?

18 A. Yes, sir.

19 Q. When you were meeting with the Tom Green Sheriff's
20 Department at your house, were they always decent with you?

21 A. Yes, sir.

22 Q. Did you ever feel like these cops might be dirty cops or
23 anything like that?

24 A. No, sir.

25 Q. Were those--up until the last one when you got arrested,

1 were those incidents generally resolved with them telling you
2 to behave yourselves and quit misbehaving kind of stuff, or go
3 sleep the night somewhere else or whatever? Was that generally
4 how those things resolved?

5 A. Yes.

6 Q. Generally resolved informally?

7 A. Yes.

8 Q. All right. Do you think that reporting cartel harassment
9 to the Mexican officials would have been a good idea?

10 A. No, sir.

11 Q. Why not?

12 A. Because they're on the payroll.

13 Q. Okay. Once you had crossed the border and you were in
14 the United States, like going through a checkpoint, did you
15 feel like, if you came out to the checkpoint people and said,
16 "Hey, these cartel people are after me," do you think you would
17 have been arrested for being in this country illegally?

18 A. Yes.

19 Q. Do you think that the jails are free from any influence
20 of these people, the cartel people?

21 Do you think you would have been safe in an
22 American jail?

23 A. No.

24 MR. SLOAN: No further questions.

25 THE COURT: All right. You may step down.

1 Call your next witness.

2 MR. SLOAN: Call Oscar Barrientos

3 THE COURT: Raise your right hand, please.

4 (THE OATH IS ADMINISTERED BY THE COURT)

5 THE COURT: Please be seated.

6 OSCAR BARRIENTOS,

7 DEFENSE WITNESS, TESTIFIED ON HIS OATH AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. SLOAN:

10 Q. Could you state your name for the jury?

11 A. Oscar J. Barrientos.

12 Q. And, Oscar, how are you employed?

13 A. I'm an investigator with the Federal Public Defender's
14 Office out of Del Rio, Texas.

15 Q. And is Del Rio, Texas, across the border from Acuna,
16 Mexico?

17 A. Yes, it is.

18 Q. How long have you been an investigator for the Federal
19 Public Defender's Office?

20 A. In Del Rio, for 19 years.

21 Q. Prior to that, do you have other law enforcement
22 experience?

23 A. I was a Border Patrol agent in San Diego, California, and
24 prior law enforcement, Texas peace officer.

25 Q. So you were a Texas peace officer? Do you have any

1 formal education?

2 A. Yes. I have a bachelor's in criminal justice with an
3 emphasis in law enforcement.

4 Q. Have you worked for the Eagle Pass Police Department?

5 A. Yes, I have.

6 Q. And when did you work for them?

7 A. Started back in 1989 all the way to January 1993.

8 Q. When you were working for them-- Is that a border town?

9 A. Yes, it is.

10 Q. Did you also work at the Hays County Sheriff's Office?

11 A. Yes. I worked in San Marcos, Texas, when I finished up
12 my bachelor's.

13 Q. And then Border Patrol was after that?

14 A. Yes.

15 Q. And then since about 1997, you have worked in Del Rio as
16 an investigator for the Defender's Office?

17 A. That is correct.

18 Q. Apart from Hays County, has all of your employment been
19 along the border?

20 A. Yes.

21 Q. How long have you lived along the border?

22 A. All my life.

23 Q. Have you had an occasion to conduct an investigation that
24 involved cross-border investigations?

25 A. Yes.

1 Q. Have you investigated serious crimes?

2 A. Yes, I have.

3 Q. Have you investigated homicides?

4 A. Yes.

5 Q. Have you investigated immigration crimes?

6 A. Yes.

7 Q. Have you investigated drug crimes?

8 A. Yes.

9 Q. Have you investigated crimes in those categories that
10 involved the cartels in Mexico?

11 A. Yes, I have.

12 Q. Are you familiar with the cartels in Mexico?

13 A. Very familiar.

14 Q. How long have you been involved in cases that involve the
15 Mexican cartels?

16 A. When I first started law enforcement as a patrol officer,
17 and I also worked as a detective, and that's when I got
18 involved with a bit of narcotics and when I got involved
19 on--you know, on the cartels.

20 Q. Okay. Have you come to know the various cartels and
21 where they operate and things like that?

22 A. Yes.

23 Q. Have you been present in the courtroom during the
24 testimony in this case?

25 A. Yes, I have.

1 Q. Have you also been made familiar with the case from
2 previous discussions with me?

3 A. Yes, I have.

4 Q. I'm going to ask you a few things that are specific to
5 this case.

6 The presence of black SUVs, does that tell you
7 something?

8 A. In the northern part of--

9 Q. In Acuna.

10 A. In Acuna? Yes. It normally pertains to Los Zetas, which
11 is a cartel, started back in--well, it started back in 1999,
12 but it deflected from the Gulf cartel back in 2010, and--

13 Q. What are the Zetas? What's their origin?

14 A. Their origin, they work for--they were paramilitary
15 personnel, and they were working as the right hand for the Gulf
16 cartel until they deflected from them in 2010. And they were
17 mostly started in Tamaulipas, which pertains to (speaking
18 Spanish) across from Laredo, Texas. And they worked their way
19 up to the northern part of the Eagle Pass area, Piedras Negras
20 sister city, Coahuila and Ciudad Acuna.

21 Q. Are these people--you said they're paramilitary. Where
22 do they get their training?

23 A. Most of them had done their training, you know, from the
24 military government. And I want to say they started clashing
25 with the Gulf cartel basically in 2010. And in Acuna, I think

1 the heaviest was January of 2013. But then that's when another
2 group started, which was Los GATES, which is (speaking
3 Spanish), and they were--

4 Q. And I'm going to stop you there.

5 A. Okay.

6 Q. You said GATES.

7 A. Uh-huh.

8 Q. And you heard the testimony of Mr. Marin. Is that GATES?
9 Is that the same thing he's referring to?

10 A. Yes.

11 Q. Okay. GATES is the Spanish pronunciation?

12 A. Yes, which is--stands for (speaking Spanish), which would
13 be Elite Arms Group.

14 Q. Okay. Elite Arms Group, was that originally part of the
15 Mexican government?

16 A. Yes, it was.

17 Q. Are they now sort of independent of the government?

18 A. They're independent. Unfortunately they're--they were
19 brought in at--supposedly in the State of Coahuila to root out
20 the Zetas, the Zeta cartel. Supposedly they were funded by the
21 Chapo Guzman organization.

22 Q. Okay. Did they then turn to illegal activities
23 themselves?

24 A. Yes, they did.

25 Q. Have you had a number of cases over the years involving

1 direct involvement with the Mexican cartel?

2 A. Yes.

3 Q. Many times or a few times or what?

4 A. Many times.

5 Q. Do you try to keep up with the changing landscape, the--
6 sort of the cartel politics?

7 A. We--we have to, actually. We do.

8 Q. Okay. Why do you have to?

9 A. Well, because most of our clients--we have clients that
10 also work with the government to bring them intelligence
11 reports, so we keep up to date, you know, on this process.

12 Q. In the State of Texas, where is Ciudad Acuna?

13 A. Ciudad Acuna would be southwest of San Antonio three
14 hours.

15 Q. And I'm sorry. I said in the State of Texas. Ciudad
16 Acuna is not in the State of Texas.

17 A. I'm sorry. Yeah.

18 Q. Del Rio is in Texas. Right?

19 A. Del Rio, Texas. And Ciudad Acuna is a border city to
20 Del Rio, Texas. My apologies.

21 Q. About how many people live there?

22 A. Right now, about 145,000 is the population.

23 Q. Have you become familiar with the operations of criminal
24 cartels in the City of Acuna, Mexico?

25 A. Yes.

1 Q. In 2013 and 2014-- Well, okay. Let me ask you--let me
2 preface this question. Is there something called a plaza?

3 A. Yes. Each northern Mexican city has a territory. The
4 city, they refer to the plaza, means--it's standing for a
5 certain cartel that runs the whole drug business out of that
6 area. And that allows--it's like a funnel from Mexico, coming
7 up. Basically whichever cartel runs that, they have to, you
8 know, pay quotas and stuff like that.

9 Q. Okay. So if a cartel has the plaza, as they say, in a
10 Mexican city, what does that mean for the inhabitants of that
11 city?

12 A. It depends. You know, if it's a hostile cartel, means
13 that there's going to be a lot of corruption, unfortunately, a
14 lot of chaos. It depends which cartel is running which city
15 and which plaza.

16 Q. In 2013 and the early part of 2014, which criminal cartel
17 had the plaza in the City of Acuna, Mexico?

18 A. Los Zetas.

19 Q. Okay. And the Zetas, you indicated, are a paramilitary
20 organization sort of?

21 A. Yes.

22 Q. Do they have actual military training from the
23 government?

24 A. The original and--the originals did have. Unfortunately,
25 they started hiring--they started organizing different

1 leaderships, and when it got--in, I want to say, 2011, 2012,
2 there were losing a lot of bodies, so they ended up, you know,
3 picking up, you know, juveniles, people underage that did not
4 have any training. Originally, yes, they were trained, but as,
5 you know, they lost more bodies, they ended up getting more
6 individuals that were not trained.

7 Q. Okay. You say they lost bodies. Were they involved in
8 disputes with other cartels?

9 A. They were in a dispute with the Gulf cartel. And, you
10 know, when I refer to bodies, means, you know, they had a lot
11 of death in between the killings between both cartels.

12 Q. So the members of the cartels kill each other with some
13 frequency?

14 A. Yes.

15 Q. Who has the plaza in Acuna now?

16 A. I am not sure it is right now. I know about six
17 months ago, they were saying it was a family Michoacan. Then
18 there were--there's another group, (speaking Spanish), are the
19 ones that were managing it recently. You know, the Zetas are
20 not--they're no longer--or they don't have control over the
21 plaza no more.

22 Q. Okay. Do cartels work in cooperation with the Mexican
23 government?

24 A. Yes.

25 Q. Okay. At what levels?

1 **A.** At the highest level to the lowest levels.

2 **Q.** Is a--are Mexican government officials on the payroll of
3 cartels sometimes?

4 **A.** In my opinion, over 90 percent of the time.

5 **Q.** Okay. So if a person is involved in a dispute with a
6 cartel, is going to the police a good idea?

7 **A.** No, it's not a good idea.

8 **Q.** Why?

9 **A.** Because normally, if you go to the police, the police are
10 going to just basically, when you leave, call, you know, the
11 drug cartel and advise them, you know, the situation.

12 **Q.** Okay. So in other words, the police would call and alert
13 the cartel that somebody just came in and--

14 **A.** That's correct.

15 **Q.** --reported on them?

16 **A.** Yes.

17 **Q.** What would probably happen to that person?

18 **A.** To the person reporting, or--

19 **Q.** Yeah, the person reporting.

20 **A.** Well, maybe he will get extra, you know, income for that
21 week, or--

22 **Q.** No, I mean the person who came into the police and
23 reported.

24 **A.** Oh. More than likely, he would probably be followed and
25 more likely, you know, if the cartels need him, he'll be picked

1 up.

2 Q. Okay. And if someone is picked up by the cartel, do they
3 usually ever come back?

4 A. Normally they don't.

5 Q. What are the sources of income of a criminal cartel?

6 A. Kidnappings, extortion, alien smuggling. Just about--
7 gambling, horse racing, gamecock fighting in Mexico.

8 Q. Drugs?

9 A. Drugs.

10 Q. Is the primary reason these cartels come into existence
11 moving drugs into the United States?

12 A. Yes.

13 Q. Have mass graves been found near Acuna?

14 A. Yes. Recently, about an hour down around Santa Rosa
15 (speaking Spanish) area, there's been a lot of graves, you
16 know, found. And also, there's a jail between (speaking
17 Spanish) and Ciudad Acuna. It's a state jail. It's called
18 (speaking Spanish). Apparently during 2011, 2012, it is said--
19 and now the media is barely, you know, acknowledging all this--
20 that they used to take the people that were picked up, put them
21 in diesel barrels and burn their bodies and then throw them,
22 you know, outside of the (speaking Spanish) prison.

23 Q. Okay. And have there been a large number of bodies
24 recovered from that location?

25 A. Not bodies, but bones and--yes.

1 Q. Parts of bodies?

2 A. Yes.

3 Q. Human remains?

4 A. Yes.

5 Q. And has that been identified as cartel activity taking
6 place within--or--close proximity to an actual government
7 facility?

8 A. Yes.

9 Q. All right. And that's the federal prison there?

10 A. The state prison.

11 Q. I'm sorry, state prison.

12 A. Yes.

13 Q. Okay. Would that indicate that there's close cooperation
14 between the state authorities and the cartel people?

15 A. That would indicate so.

16 Q. Are cartels vulnerable to infiltration?

17 A. Yes.

18 Q. Does the United States Drug Enforcement Agency have
19 agents in Mexico that try to infiltrate cartels?

20 A. Both, yeah, U.S. Customs and Border Protection and also
21 Drug Enforcement Agency have agents in Mexico.

22 Q. Okay. So they--we have our agents in another country.
23 That's with the governments' agreement. Right?

24 A. Yes.

25 Q. Okay. And under these sort of joint agreements, have

1 United States agents operated in Mexico?

2 A. Yes.

3 Q. Have DEA drug enforcement agents been captured by the
4 cartel?

5 A. I mean, going--I mean, I can go back a few years. I
6 think there was a U.S. Customs and Border Protection officer by
7 the name of Jaime Zapata who was working in--I believe he was
8 stationed out of Monterrey, but he was traveling from Laredo to
9 San Luis Potosi. And I believe they got--as they were
10 traveling, they got stopped and they got killed, and I believe
11 the Zetas were--were the ones who did that hit.

12 Q. Okay. So the Zetas killed a United States peace officer
13 or--

14 A. Federal agent.

15 Q. --federal agent--

16 A. Yes.

17 Q. --in Mexico?

18 Kiki Camarena, was he also killed in connection
19 with the drug trade?

20 A. Yes, he was. And I believe that was the Guadalajara
21 cartel, and I believe that was in the eighties. I'm not sure.

22 Q. Okay. So one of the southern cartels?

23 A. Yes.

24 Q. And was he actually tortured and murdered?

25 A. Yes, he was.

1 Q. If someone were to be identified as a Drug Enforcement
2 agent operating undercover in Mexico, what happens to that
3 person?

4 A. My opinion is, if they know that, you know, he is working
5 undercover, I mean, he's going to get picked up and, you know,
6 be discarded, basically, or killed.

7 Q. Okay. If somebody was identified by, for example, the
8 Zetas as being an undercover federal agent, United States
9 federal agent, would a different cartel concern themselves with
10 it?

11 A. Yes, because it poses a problem to different--whoever the
12 cartel is there. You know, they are very uneasy, you know,
13 in--especially in the northern cities when there's somebody who
14 they don't know or who he works for. They're very uneasy on
15 that.

16 Q. You have heard both Mr. Pina and--or Mr. Marin and his
17 wife talk about the play that was made to try to get them to
18 run drugs across the border. Would that be something you would
19 expect from a cartel?

20 A. I would, you know, to see, you know--you know, if that
21 person really is or doesn't work for the government. Being
22 honest, I mean, it's--usually when you get picked up, I mean,
23 you don't get released, so--

24 Q. Okay. So when--for example, when Mr. Pina was taken into
25 that house and searched, the usual result of that is, he's not

1 coming out of the house?

2 A. Usually you get, you know, paddled, per se. What I mean
3 paddled, is, you get beaten severely and then maybe released,
4 if you get released.

5 Q. Okay. Let's talk a little bit about the cartels'
6 sophistication. Do you consider the cartels to be
7 sophisticated organizations?

8 A. Yes, I do.

9 Q. Do they have technological advances?

10 A. Yes.

11 Q. What are some examples of that?

12 A. Examples would be, I know just about a year ago, in
13 Ciudad Victoria, which is about an hour and a half down from
14 (speaking Spanish), they had put cameras, you know, in the
15 city. They mobilized themselves using technology, Facebook,
16 you know, social media networks. I mean, they're pretty
17 sophisticated.

18 Q. If Mr. Marin had been identified in Acuna as being a
19 federal agent, would it be beyond the capabilities of the
20 cartels to communicate that across Mexico?

21 A. It would be very easy, you know, in just making phone
22 calls, advising, you know, different cartels, you know, who
23 that person is.

24 Q. All right. They have the Internet too. Right?

25 A. Yeah, they have the Internet, you know. Sometimes, you

1 know, they'll take photos and they'll disseminate the
2 information to other places or other cartels.

3 Q. The searching of a house, does that signify anything to
4 you?

5 A. That's something that's done, common. And the reason I
6 say "common" is because I deal with these cases on a daily and
7 weekly base where--you know, especially if they want to know
8 something about a person, they'll go in--they'll go through
9 personal photos. It may be two or three weeks later where
10 they'll pick you up and they say, you know what? You know, I
11 have--I know who your wife is, your child, you know, but I need
12 for you to basically, you know, do this or travel into the U.S.
13 and take drugs.

14 Q. Okay. Do they sometimes coerce people into running drugs
15 for them by making threats to their family?

16 A. Yes.

17 Q. Are those threats carried out?

18 A. Yes, I've seen it carried out.

19 Q. You say you've seen it carried out. And what I'm talking
20 about is a threat not just to an individual, but to--

21 A. To family members.

22 Q. Does the violence go beyond immediate family?

23 A. Yes.

24 Q. Like--give me an example.

25 A. Well, give you an example, I live in--I work in Del Rio

1 but I live in Eagle Pass, and Eagle Pass is a border town with
2 Piedras Negras. I think in 2011, we had some families out of
3 Eagle Pass that were in Nienda (phonetically), Coahuila, where
4 there was--they were looking for a certain family. And they
5 ended up finding the family and they ended up killing not only
6 the family, which means from the grandmother to 2- and
7 3-year-old children, but also all the people that were in the
8 house at, you know, just the wrong time.

9 Q. Okay. And where did that happen?

10 A. That happened in Nienda (phonetically), Coahuila, about
11 2011.

12 Q. Okay. Was there an incident involving a school bus full
13 of protestors?

14 A. I heard that there was. I'm not sure; I think it was
15 down in Central Mexico where they disappeared, like,
16 44 students or something like that.

17 Q. Okay. When you say "they disappeared 44 students," what
18 does it mean to disappear in Mexico?

19 A. Basically just eradicate them, basically kill them.

20 Q. Are the police down there very vigilant in solving these
21 crimes?

22 A. No.

23 Q. What about corruption within Acuna itself? Do you have
24 an opinion as to whether the local authorities would be a
25 reliable place to go to for protection?

1 **A.** Living--I cross a lot to Mexico, and, you know, the way
2 the police works, I mean, normally they--I'll give you an
3 example. They see organized crime or cartel picking up
4 somebody, and if the police are there, the police are not going
5 to do anything, basically.

6 **Q.** All right. So if somebody is at an intersection and
7 somebody tries to kidnap them out of their car, would it
8 surprise you that a police officer looked on and did nothing?

9 **A.** It wouldn't surprise me. I have a friend who just
10 retired with U.S. Customs and Border Protection. I want to say
11 in April, his wife got picked up, and her son, and they ended
12 up leaving--or breaking one of the windows from the vehicle,
13 and they got--she got shot in her chest, her son got shot in
14 the back of the neck. And there was a police officer about a
15 block away.

16 **Q.** Did he do anything?

17 **A.** No.

18 **Q.** Are the cartels capable of reaching across the border
19 into the United States?

20 **A.** They're networked all--almost all the major cities in the
21 U.S.

22 **Q.** Okay. According to the Drug Enforcement Agency, do the
23 cartels have a presence in every state in the union?

24 **A.** Yes.

25 **Q.** And by--I mean, the Drug Enforcement--the United States

1 Drug Enforcement Agency, do they issue reports on this sort of
2 thing?

3 A. Yeah, they do, like, a yearly report. And you can go to
4 their website and they usually have a map and they'll
5 distribute the cartels, you know, from Baja, California, all
6 the way down to Florida, even the northern U.S. cities.

7 Q. Okay. And as far as the southern part of Texas, towns in
8 the southern part of Texas, do the Zetas have a presence in
9 American towns?

10 A. Yes, they do.

11 Q. Are they capable of killing somebody in the United States
12 of America?

13 A. Yes.

14 Q. Has that happened before?

15 A. I don't know on factual, but I know that they have hired,
16 in conjunction, street-level gangs, like Mexican Mafia, Texas
17 Syndicate, Latin Kings, to, you know, sometimes work in
18 conjunction with them.

19 Q. Okay. So a person might not be killed by an actual
20 cartel member, but they would contract it out to an American
21 street gang?

22 A. Subcontract, yes.

23 Q. Subcontract. Okay.

24 Are you familiar with United States prison gangs
25 and street gangs?

1 **A.** Most of the ones in Texas.

2 **Q.** Okay. Are there-- What's the difference between a
3 prison gang and a street gang?

4 **A.** Prison gangs are sometimes run--they will give you--like
5 the Mexican Mafia. They're active in the prison, and they're
6 also active on the street. Sometimes you may have one of the
7 higher lieutenants or somebody who is a resident and is serving
8 time. Well, sometimes they will communicate to their lower
9 street, you know, gangs to do certain things or certain illicit
10 work, you know, for the--

11 **Q.** Have prison gangs committed murder in prisons?

12 **A.** Yes.

13 **Q.** Are the cartels able to reach into United States prisons?

14 **A.** Unfortunately, yes.

15 **Q.** What about in other states? Like if somebody was to get
16 transferred to Chicago or New York or something like that,
17 would that be beyond the reach of these people?

18 **A.** No.

19 **Q.** Are they-- You say they subcontract with American gangs?

20 **A.** Uh-huh.

21 **Q.** Are they also capable of putting a bounty on somebody?

22 **A.** Yes.

23 **Q.** Have you seen that before?

24 **A.** I have not seen it personally. I have read about it, but
25 I have not--I have--I don't have personal experience on that.

1 Q. Okay. How-- Are you familiar with a term called
2 falcones (phonetically)?

3 A. Halcones (phonetically).

4 Q. Okay. What is that?

5 A. Halcones are basically--they live in a border town. They
6 get paid from the cartels. They usually get paid about
7 5,000 pesos per every two weeks. Just to give you an average,
8 what it is, a normal factory worker makes between 1,200 to
9 1,500 pesos a week. Okay?

10 So halcones basically are spotters that--some of
11 them cross to the U.S. and some of them stay at the port of
12 entry or near the port of entry, and they usually look at
13 shipments coming from, you know, Mexico to the U.S. Usually if
14 they run cocaine, heroin, or meth, they will have a spotter,
15 you know, watching the vehicle to make sure that vehicle passes
16 the port of entry area. And then, you know, they call the--you
17 know, the Mexican, you know, halcones or the Mexican person via
18 cell phone or walk back and advise that the car has made it
19 into the U.S.

20 Q. Do these halcones also watch, like, for the immigration
21 bus?

22 A. Yes. The deportation buses usually go to half of the
23 international bridge and they will release, you know, people
24 that have been incarcerated in the U.S., and they will keep a
25 watch on them walking back to Mexico.

1 Q. Okay. So the halcone--the halcones--the spotters will
2 watch the deportees as they come into Mexico?

3 A. Yes.

4 Q. Do they then interact with those deportees?

5 A. They will probably have somebody else interact with them.

6 Q. What will usually happen?

7 A. Usually they will have--basically they'll--once they pass
8 the Mexican port of entry, usually they'll--depending on who
9 that person is, a lot of times you have people that are
10 released that have a lot of tattoos, and that's normally
11 something that the cartel is interested in. Why? Because
12 they're interested in picking that person up to have them work
13 for them. And sometimes they will get picked up and they end
14 up working for the drug cartels.

15 Q. Okay. If a person from a--let's say the Gulf cartel was
16 deported into Ciudad Acuna during the time when the Zetas had
17 the plaza, would they pick him up?

18 A. Oh, definitely.

19 Q. And identify him by his tattoos?

20 A. Yes, or by, you know, who he is. Usually they harass,
21 you know, all the people that are going back.

22 Q. Okay. And then would he likely be killed?

23 A. Depending on, well, what allegiance or alliance he has to
24 what specific cartel.

25 Q. Okay. So a rival cartel--he might kill someone from a

1 rival cartel--

2 A. Yes.

3 Q. --or let them go or--

4 A. Right.

5 Q. What does the Mexican Border Patrol do about that?

6 A. You have (speaking Spanish)--actually I've never seen
7 them do anything basically. I have never dealt with them,
8 except on maybe sending a minor back to Mexico. Other than
9 that--

10 Q. What about the Mexican police or the federales? Do they
11 protect the people?

12 A. No.

13 Q. Let's talk about the offer that was made to Mr. Marin to
14 run a load to prove he's not a DEA agent. Would that be an
15 alternative--an acceptable alternative for somebody to do? I
16 mean, apart from its illegality, just from a practical point of
17 view, would that work out for these folks?

18 A. No.

19 Q. Why not?

20 A. Because once you go in, I mean, basically you're either
21 going to be moving a lot of drugs-- Let's say he does make it
22 in. He's basically going to be working for them. And when he
23 decides not to, more than likely, he's going to be, you know,
24 killed.

25 Q. Okay. So they would use him up and then kill him?

1 **A.** Yes.

2 **Q.** Do the halcones keep track of who crosses the border on a
3 regular basis?

4 **A.** Yes.

5 **Q.** Like, for example, when Ms. Marin is taking the kids to
6 school, would they know that from having watched her vehicle?

7 **A.** I'll be honest with you, and this is because I have
8 personal knowledge, because I have friends that reside in
9 Mexico. And--and I'll answer your question, but, you know, a
10 lot of these residents that live--they're U.S. citizens that
11 live in Mexico that come across every day. I mean, the drug
12 cartels know, you know, what they're driving and who they are,
13 you know. And a lot of times, depending on where they live or
14 what society they belong to, you know, they may, you know,
15 harass them into, you know, bringing in something illegal. I
16 have friends that reside in Mexico and they prefer to walk and
17 work in the U.S. and walk back because--

18 **Q.** They don't want to be seen driving a car?

19 **A.** Well, because they have been harassed already.

20 **Q.** What about seeking asylum, going into the American
21 Embassy and seeking asylum if you're under a threat from a
22 cartel? Is that a viable option?

23 **A.** It's a viable option. You can go in, but, I guess, after
24 you're done asking for political asylum, you're basically not
25 going to be protected or you're not going to stay there.

1 Q. Okay. So does the United States Consulate or
2 United States Embassy--do they have a safe house for asylum
3 seekers?

4 A. I don't have personal knowledge of them having safe
5 houses, I mean, so I cannot, you know, testify to that. I
6 mean--

7 Q. Okay. But have you seen asylum seekers in the past who
8 have attempted to seek asylum involved in your cases?

9 A. Yes, I have.

10 Q. And what's the usual process?

11 A. Sit and wait in Mexico basically.

12 Q. So they would go down to this office, pick up a form,
13 fill it out, and they go back home and--

14 A. Yes.

15 Q. --wait for it to be decided?

16 A. Yes.

17 Q. How long do those processes take?

18 A. It can be a year, two years, three years.

19 Q. Okay. So whatever danger they're in, they're going to
20 remain in that danger while they're waiting for asylum?

21 What about crossing the bridge into the
22 United States, seeking asylum with the border guys?

23 A. Unfortunately, if you have a--if you are a deported
24 alien, you're probably going to be charged with a 1326, which
25 is re-entry after deportation, just merely for going to the

1 port of entry.

2 Q. Okay. Because the port of entry is on the American side
3 of the border?

4 A. The U.S. side.

5 Q. So you have to cross the border to get there. Right?

6 A. That's correct.

7 Q. So in order for a deportee to go and seek asylum in that
8 place, he has to actually commit another crime. Right?

9 A. He will be basically--aliens are inspected, so basically
10 when he goes to the port of entry, they will run his name, his
11 alien number, and if he is deported, he's going to be
12 incarcerated.

13 Q. Can a person with an aggravated felony conviction in
14 their history even get asylum in the United States?

15 A. No.

16 Q. All right. Is there a--there's a specific statute that
17 prohibits that?

18 A. Yes.

19 Q. Do you know about a United States Marine having been
20 murdered at Falcon Lake in Texas?

21 A. I know the story. I fish in Falcon Lake. The guy was a
22 jet skier. Him and his wife crossed into the Mexican side of
23 Falcon Lake, and I think he got--well, I mean, we know he got
24 shot and killed. I don't know if the body was ever recovered.

25 Q. Is it common for people to--I mean--for people to

1 disappear in Mexico and never be heard from again?

2 A. Yes.

3 Q. Is there any legitimate recourse to go to the authorities
4 for protection, in your opinion?

5 A. Not in Mexico.

6 MR. SLOAN: I'll pass the witness.

7 CROSS-EXAMINATION

8 BY MR. HAAG:

9 Q. Good afternoon, Mr. Barrientos.

10 A. Good afternoon, Counselor.

11 Q. You are employed by the Office of the Federal Public
12 Defender; is that correct?

13 A. Yes, sir.

14 Q. And the Office of Public Defender represents the
15 defendant in this case?

16 A. I work for the Western District of Texas, and this is the
17 Northern District.

18 Q. Okay. But you still represent--you're representing the
19 defendant's interests here? You're not representing just--
20 you're not here out of the goodness of your heart; you're
21 representing the defendant's interests?

22 A. That is correct.

23 Q. And let's be clear. You don't have any personal
24 knowledge at all about his case?

25 A. No.

1 Q. This is all just stories that you've heard, things that
2 you've come across, stories you've read, generalized
3 information about things in Mexico?

4 A. I wouldn't say generalized, because I have friends that,
5 you know, have been picked up, you know, by the drug cartels or
6 have been traveling from Laredo in a bus to Piedras Negras,
7 they get pulled over and basically they take all their monies
8 and-- General, maybe on some things, like we have friends that
9 work for the media, for (speaking Spanish), in Piedras Negras,
10 and so I get a lot of information, you know, from them.

11 Q. Okay. But they're not things that have happened to you?

12 A. That's correct.

13 Q. And really, I mean, based upon what you've told this jury
14 here today, all 145,000 citizens in Acuna, Mexico, should be
15 allowed to cross into the United States because they're all
16 under duress; isn't that correct?

17 A. I never specifically said that.

18 Q. Well, I mean, the situation you described is, everyone in
19 Acuna lives at the whim of drug cartels. The police are all
20 corrupt, there's no recourse, and the only thing to do is to
21 enter the United States. Is that correct?

22 A. I can't speak for Mexican citizens. I'm a U.S. citizen
23 and I live in the U.S. So they have to live with what, you
24 know, their area--I mean, unfortunately, if you live in the
25 northern city versus living in, you know, another city in

1 Mexico, of course, the northern Mexican cities are always going
2 to be clashing because that is where all the drugs--it's a
3 billion-dollar industry. All the drugs from Mexico, from
4 Colombia, they all come in through Mexico.

5 Q. And you raise a very good point. There's a severe
6 distinction between the situation in Acuna, Mexico, and
7 Yucatan, Mexico. Correct?

8 A. Yes.

9 Q. And let's go ahead and take a look at a few things. How
10 many American citizens are estimated to live in Mexico?

11 A. Don't know the estimate. I travel a lot to Mexico, and I
12 would say thousands of U.S. Americans, you know, live in Mexico
13 at least, you know, four or six months out of the year.

14 Q. Would it surprise you to learn that approximately one
15 million American citizens live in Mexico?

16 A. It wouldn't surprise me.

17 Q. And the places that they live, mainly along the Yucatan
18 Peninsula, those are safe places, are they not?

19 A. Yes, fairly safe.

20 Q. And you heard the defendant testify in trial, and his
21 wife testify in trial, that when they were in Yucatan, there
22 were no problems; is that correct?

23 A. That's correct.

24 Q. And as you noted, millions of Americans travel to Mexico
25 every year as tourists; is that correct?

1 A. That is correct.

2 Q. And they travel to very safe locations in Mexico?

3 A. Yes.

4 Q. Let's talk a little bit--you talked about the corruption
5 in Mexico, and I believe, according to your estimates, that
6 90 percent of the police force or government officials in Acuna
7 were corrupt?

8 A. Yes.

9 Q. What do you base that on?

10 A. I base that on what I've seen. I have, you know, lived
11 in the border towns all my life. I cross into Mexico. There's
12 a certain thing that we learned when I was young, you know,
13 (speaking Spanish), you know, basically, you know, paying off
14 you know, Mexican officials, you know, certain things--little
15 things. You know, I made it a habit always to have 200 pesos.
16 I used to get stopped when I was younger because I had a fast
17 car, driving into Mexico, and basically, you know, take out the
18 200 pesos and you'd be on your way.

19 Q. So based upon your experience in giving bribes,
20 essentially, to Mexican law enforcement, you believe that,
21 based on that, in your estimation, about 90 percent of them are
22 corrupt?

23 A. Yes.

24 Q. What about the state Mexican law enforcement?

25 A. Also.

1 Q. And the federal Mexican law enforcement?

2 A. Also.

3 Q. Let's talk a little bit about asylum. What is your
4 familiarity with the process for obtaining--well, it's actually
5 not asylum, is it, if they're outside the United States.
6 Right?

7 A. Correct.

8 Q. If they're outside the United States, what is that
9 process called?

10 A. Well, it depends. If you come into the U.S.--
11 Immigration is very complex, and I'm got not going to testify
12 as an expert, and the Judge will probably kick me out on this
13 also, so-- So Border Patrol, when I was a Border Patrol agent,
14 usually we'd deal with--they used to take out a book, and about
15 that much (indicating) was deportations. Okay? Anybody coming
16 into the U.S., you know, you can be excluded, and it deals with
17 another type of immigration, which are exclusion--exclusionary
18 law under the Immigration and Naturalization Act.

19 To answer your question, I mean, political asylum
20 is--if you're in the U.S, you know, if you want to ask for
21 political asylum, you have to do it through the proper
22 channels, through immigration court, which is an administrative
23 proceeding versus a criminal proceeding, as to what we're doing
24 here.

25 Q. Okay. And let's--and I just want to make sure that the

1 jury understands. In all candor, you can't express an opinion
2 that if the defendant were to apply for either refugee status
3 from outside the country or asylum status in the country, that
4 he would definitely be denied, can you?

5 A. I know for a fact if you have an aggravated felony, you
6 cannot get political asylum. And I think--and I know I've read
7 that in the immigration--

8 Q. Okay. But what--I mean, have you ever been--served as an
9 asylum officer?

10 A. No, I have not.

11 Q. Have you served with the Bureau of Immigration and
12 Citizenship Services?

13 A. No, sir.

14 Q. Would it surprise you to learn that there, in fact, is
15 eligibility for relief from being an aggravated felon?

16 A. It would surprise me.

17 Q. Would it surprise you to learn that you can apply
18 through--if you're--depending on your asylum results, you can
19 apply to the Board of Immigration Appeals. Have you heard of
20 that entity before?

21 A. Yes, I have.

22 Q. And then you can apply from Board of Immigration Appeals
23 up to--directly to the Courts of Appeal across the
24 United States?

25 A. Yes.

1 Q. Okay. So can you tell this jury to a 100-percent degree
2 of certainty, if this defendant applied for either asylum or
3 refugee status, there's no way in the world he could ever get
4 it?

5 A. Not with 100-percent percentage.

6 Q. Even outside the asylum status, you were here and heard
7 the defendant testify about the possibilities for obtaining
8 citizenship. Correct?

9 A. Correct.

10 Q. And he certainly had a path to citizenship at one point
11 in time, didn't he?

12 A. Yes.

13 Q. He, in fact, really had two paths to citizenship?

14 A. Yes.

15 Q. He could have gone the military route or he could have
16 gone the regular application route?

17 A. Correct.

18 Q. We've talked a little bit about--well, really in vague
19 terms, about asylum procedures here in the United States. Are
20 there other countries that have asylum?

21 A. Yes.

22 Q. Does Canada have asylum?

23 A. Yes.

24 Q. Are there countries in Central America that offer asylum?

25 A. Yes.

1 Q. Are there countries in South America that offer asylum?

2 A. Yes.

3 MR. HAAG: Pass the witness, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. SLOAN:

6 Q. Mr. Haag talked about the people of Mexico, the citizens
7 and the tourists. In your opinion, is there a difference
8 between a specific threat versus a general threat?

9 A. Rephrase that.

10 Q. All right. The people who live in Mexico, the
11 U.S. citizens who live in Mexico that haven't been identified
12 as agents of the federal government, are they living under the
13 same kind of threat as somebody who has been identified that
14 way?

15 A. No.

16 Q. All right. And once somebody has been specifically
17 identified as being a DEA agent, is there any place in Mexico
18 that they can call safe?

19 A. No. They're a target basically.

20 Q. What about the Yucatan? Isn't that a place that's
21 perfectly safe, or have people been murdered there?

22 A. Yes, but if you're targeted as an individual, you know,
23 by any drug cartel, you're going to be found, whether it be any
24 state in Mexico.

25 Q. In terms of this refugee status, seeking that, the laws

1 on aggravated felons--is it more likely than not that he would
2 be denied that status based on his record?

3 A. My opinion would be more likely than not.

4 Q. All right.

5 MR. SLOAN: Pass the witness.

6 THE COURT: All right. You may step down.

7 Call your next witness.

8 MR. SLOAN: Defense-- Oh, I'm sorry. Go ahead.

9 MS. LIGGETT: Your Honor, at this time, the defense
10 would ask the Court to take judicial notice of the law found in
11 8 U.S.C. Section 1158. The Fifth Circuit has recognized the
12 power of a federal court to take judicial notice of legislative
13 facts. It is the section of the law governing asylum and
14 noting that aliens convicted of aggravated felonies are not
15 eligible for the asylum relief provided thereunder.

16 THE COURT: I'll take that under advisement.

17 MS. LIGGETT: We do have--it's marked as
18 Defendant's Exhibit 1. Should the Court decide to admit it, we
19 are prepared to have it admitted into evidence.

20 THE COURT: All right.

21 MR. SLOAN: With that, Your Honor, the defense
22 rests.

23 THE COURT: All right.

24 MR. LONG: The United States closes, Your Honor.

25 MR. SLOAN: Rest and close, Your Honor.

1 THE COURT: All right, members of the jury. You
2 have heard all the evidence to be produced in the case. The
3 next stage of the proceedings will be for me to present to you
4 my charge or instructions on the law. I will do that at 9:00
5 in the morning.

6 So for your purposes, you will be in recess for the
7 rest of the day. Please keep all my instructions in mind.
8 Please be back in the jury room in the morning at 9:00. We
9 will take up at that time.

10 All rise for the jury.

11 (THE JURORS EXIT THE COURTROOM)

12 THE COURT: All right. Be seated.

13 All right. I've pulled some pages from my charge.
14 I'm going to leave it here in the courtroom. The attorneys
15 will need to conform your copies with what I've got here. I'll
16 be back in the courtroom in 20 minutes.

17 (RECESS TAKEN)

18 (OUTSIDE THE PRESENCE OF THE JURY)

19 THE COURT: All right. We're in court outside the
20 presence of the jury.

21 I've handed to the attorneys a copy of the proposed
22 charge. The Court will now entertain any objections or
23 requests from the attorneys. From the government?

24 MR. LONG: No objections to the charge from the
25 government, Your Honor.

1 THE COURT: All right, sir. Defense?

2 MR. SLOAN: No objections to the charge, Your
3 Honor. Thank you.

4 THE COURT: All right. At 9:00 a.m. in the
5 morning, I'll read the charge to the jury; then I'll give the
6 attorneys an opportunity to make their summations. How much
7 time is requested by the government?

8 MR. LONG: Twenty minutes, Your Honor.

9 THE COURT: Twenty?

10 Is that enough--

11 MR. SLOAN: We can do 20, Judge.

12 THE COURT: I'll give each side up to 20 minutes
13 then for your summations.

14 All right. Court will stand adjourned until 9:00
15 in the morning.

16 (END OF DAY)

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